

CHILD WELFARE DEFINITIONS

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends definitions and related provisions in the Child and Family Services chapter of the Utah Human Services Code and in the Juvenile Court Act of 1996.

Highlighted Provisions:

This bill:

- ▶ eliminates overlapping portions of definitions;
- ▶ modifies definitions;
- ▶ adds new definitions;
- ▶ simplifies and consolidates definitions;
- ▶ establishes consistency between definitions in the Child and Family Services chapter of the Utah Human Services Code and the Juvenile Court Act of 1996;
- ▶ modifies portions of the Child and Family Services chapter of the Utah Human Services Code and the Juvenile Court Act of 1996 to conform with the changes to, and addition of, definitions in this bill; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-101, as last amended by Laws of Utah 2006, Chapters 75, and 281

62A-4a-107.5, as last amended by Laws of Utah 2000, Chapter 290

62A-4a-113, as last amended by Laws of Utah 2002, Chapter 149

62A-4a-201, as last amended by Laws of Utah 2006, Chapter 75

62A-4a-202.4, as last amended by Laws of Utah 1998, Chapter 263

62A-4a-202.6, as last amended by Laws of Utah 2006, Chapter 55

- 33 **62A-4a-203**, as last amended by Laws of Utah 2006, Chapter 75
- 34 **62A-4a-301**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 35 **62A-4a-302**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 36 **62A-4a-303**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 37 **62A-4a-304**, as last amended by Laws of Utah 1996, Chapter 242
- 38 **62A-4a-305**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 39 **62A-4a-306**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 40 **62A-4a-309**, as last amended by Laws of Utah 2000, Chapter 321
- 41 **62A-4a-311**, as last amended by Laws of Utah 2003, Chapter 246
- 42 **62A-4a-401**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 43 **62A-4a-402**, as last amended by Laws of Utah 2006, Chapter 281
- 44 **62A-4a-403**, as last amended by Laws of Utah 1999, Chapter 21
- 45 **62A-4a-405**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 46 **62A-4a-406**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 47 **62A-4a-409**, as last amended by Laws of Utah 2006, Chapter 75
- 48 **62A-4a-411**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 49 **62A-4a-412**, as last amended by Laws of Utah 2006, Chapters 77, and 281
- 50 **62A-4a-414**, as last amended by Laws of Utah 2007, Chapter 169
- 51 **62A-4a-802**, as last amended by Laws of Utah 2002, Chapter 246
- 52 **62A-4a-1002**, as enacted by Laws of Utah 2006, Chapter 77
- 53 **62A-4a-1003**, as last amended by Laws of Utah 2007, Chapter 152
- 54 **62A-4a-1005**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 55 **62A-4a-1006**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 56 **62A-4a-1007**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 57 **62A-4a-1009**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 58 **62A-4a-1010**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 59 **76-7-304**, as last amended by Laws of Utah 2006, Chapter 207
- 60 **78-3a-103**, as last amended by Laws of Utah 2006, Chapters 75, 97, and 281
- 61 **78-3a-301**, as last amended by Laws of Utah 2007, Chapter 111
- 62 **78-3a-306**, as last amended by Laws of Utah 2007, Chapter 169
- 63 **78-3a-307.1**, as last amended by Laws of Utah 2007, Chapter 152

64 **78-3a-311**, as last amended by Laws of Utah 2006, Chapters 75, and 97

65 **78-3a-314**, as last amended by Laws of Utah 2007, Chapter 152

66 **78-3a-318**, as enacted by Laws of Utah 1996, Chapter 1 and last amended by Laws of
67 Utah 1996, Chapter 318

68 **78-3a-403**, as last amended by Laws of Utah 1996, Chapter 318

69 **78-3a-407**, as last amended by Laws of Utah 2006, Chapter 281

70 **78-3a-408**, as last amended by Laws of Utah 2005, Chapter 95

71 **78-3a-801**, as last amended by Laws of Utah 2007, Chapter 81

72

73 *Be it enacted by the Legislature of the state of Utah:*

74 Section 1. Section **62A-4a-101** is amended to read:

75 **62A-4a-101. Definitions.**

76 As used in this chapter:

77 ~~[(1)(a) "Abuse" means:]~~

78 ~~[(i) actual or threatened nonaccidental physical or mental harm;]~~

79 ~~[(ii) negligent treatment;]~~

80 ~~[(iii) sexual exploitation; or]~~

81 ~~[(iv) any sexual abuse.]~~

82 ~~[(b) "Abuse" does not include:]~~

83 ~~[(i) reasonable discipline or management of a child, including withholding privileges;]~~

84 ~~[(ii) conduct described in Section 76-2-401; or]~~

85 ~~[(iii) the use of reasonable and necessary physical restraint or force on a child:]~~

86 ~~[(A) in self-defense;]~~

87 ~~[(B) in defense of others;]~~

88 ~~[(C) to protect the child; or]~~

89 ~~[(D) to remove a weapon in the possession of a child for any of the reasons described
90 in Subsections (1)(b)(iii)(A) through (C).]~~

91 (1) "Abuse" is as defined in Section 78-3a-103.

92 (2) "Adoption services" means:

93 (a) placing children for adoption;

- (b) subsidizing adoptions under Section 62A-4a-105;
- (c) supervising adoption placements until the adoption is finalized by the court;
- (d) conducting adoption studies;
- (e) preparing adoption reports upon request of the court; and
- (f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) "Board" means the Board of Child and Family Services established in accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

(4) "Child" means, except as provided in Part 7, Interstate Compact on Placement of Children, a person under 18 years of age.

(5) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

(6) "Chronic ~~[physical]~~ abuse" means repeated or patterned ~~[physical]~~ abuse.

(7) "Chronic neglect" means ~~[a] repeated or patterned [failure or refusal by a parent, guardian, or custodian to provide necessary care for a child's safety, morals, or well-being]~~ neglect.

~~[(8) "Chronic emotional abuse" means repeated or patterned emotional abuse.]~~

~~[(9)]~~ (8) "Custody," with regard to the division, means the custody of a minor in the division as of the date of disposition.

~~[(10)]~~ (9) "Day-care services" means care of a child for a portion of the day which is less than 24 hours:

- (a) in the child's own home by a responsible person; or
- (b) outside of the child's home in a:
 - (i) day-care center;
 - (ii) family group home; or
 - (iii) family child care home.

~~[(11)]~~ (10) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

~~[(12)]~~ (11) "Director" means the director of the Division of Child and Family Services.

~~[(13)]~~ (12) "Division" means the Division of Child and Family Services.

125 ~~[(14)(a)]~~ (13) "Domestic violence services" means:

126 ~~[(14)(a)]~~ (a) temporary shelter, treatment, and related services to ~~[persons who are victims~~
127 ~~of abuse and their dependent children; and];~~

128 (i) a person who is a victim of abuse, as defined in Section 30-6-1; and

129 (ii) the dependent children of a person described in Subsection (13)(a)(i); and

130 ~~[(14)(b)]~~ (b) treatment services for ~~[domestic violence perpetrators. (b) As used in this~~
131 ~~Subsection (14): (i) "abuse" means the same as that term is defined in Section 30-6-1; and (ii)~~
132 ~~"domestic violence perpetrator" means]~~ a person who is alleged to have committed, has been
133 convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

134 (14) "Harm" is as defined in Section 78-3a-103.

135 (15) "Homemaking service" means the care of individuals in their domiciles, and help
136 given to individual caretaker relatives to achieve improved household and family management
137 through the services of a trained homemaker.

138 (16) "Incest" is as defined in Section 78-3a-103.

139 ~~[(16)]~~ (17) "Minor" means, except as provided in Part 7, Interstate Compact on
140 Placement of Children:

141 (a) a child; or

142 (b) a person:

143 (i) who is at least 18 years of age and younger than 21 years of age; and

144 (ii) for whom the division has been specifically ordered by the juvenile court to provide
145 services.

146 (18) "Molestation" is as defined in Section 78-3a-103.

147 ~~[(17)]~~ (19) "Natural parent" means a minor's biological or adoptive parent, and
148 includes a minor's noncustodial parent.

149 ~~[(18)(a)]~~ "Neglect" means:

150 ~~[(i)]~~ abandonment of a child, except as provided in Part 8, Safe Relinquishment of a
151 Newborn Child;

152 ~~[(ii)]~~ subjecting a child to mistreatment or abuse;

153 ~~[(iii)]~~ lack of proper parental care by reason of the fault or habits of the parent,
154 guardian, or custodian;

155 ~~[(iv)]~~ failure or refusal of a parent, guardian, or custodian to provide proper or necessary

~~subistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for the child's health, safety, morals, or well-being; or]~~

~~[(v) a child at risk of being neglected or abused because another child in the same home is neglected or abused.]~~

~~[(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.]~~

~~[(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.]~~

~~[(d)(i) Notwithstanding Subsection (18)(a), a health care decision made for a child by the child's parent or guardian does not constitute neglect unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.]~~

~~[(ii) Nothing in Subsection (18)(d)(i) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.]~~

(20) "Neglect is as defined in Section 78-3a-103.

~~[(19)]~~ (21) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:

(a) the shelter hearing; or

(b) the child's return home.

~~[(20)]~~ (22) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a child;

(b) to a cohabitant who is neglecting or abusing a child, in order to:

(i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and

(ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

(c) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law

187 enforcement agency;

188 (ii) to cause a protective order to be issued for the protection of the child, when

189 appropriate; and

190 (iii) to protect the child from the circumstances that endanger the child's welfare

191 including, when appropriate:

192 (A) removal from the child's home;

193 (B) placement in substitute care; and

194 (C) petitioning the court for termination of parental rights.

195 (23) "Severe abuse" is as defined in Section 78-3a-103.

196 ~~[(21)] (24) "Severe neglect" [means neglect that causes or threatens to cause serious~~

197 ~~harm to a child]~~ is as defined in Section 78-3a-103.

198 (25) "Sexual abuse" is as defined in Section 78-3a-103.

199 (26) "Sexual exploitation" is as defined in Section 78-3a-103.

200 ~~[(22)] (27) "Shelter care" means the temporary care of a minor in a nonsecure facility.~~

201 ~~[(23)] (28) "State" means:~~

202 (a) a state of the United States;

203 (b) the District of Columbia;

204 (c) the Commonwealth of Puerto Rico;

205 (d) the Virgin Islands;

206 (e) Guam;

207 (f) the Commonwealth of the Northern Mariana Islands; or

208 (g) a territory or possession administered by the United States.

209 ~~[(24) "Severe emotional abuse" means emotional abuse that causes or threatens to~~

210 ~~cause serious harm to a child.]~~

211 ~~[(25) "Severe physical abuse" means physical abuse that causes or threatens to cause~~

212 ~~serious harm to a child.]~~

213 ~~[(26)] (29) "State plan" means the written description of the programs for children,~~

214 youth, and family services administered by the division in accordance with federal law.

215 ~~[(27)] (30) "Status offense" means a violation of the law that would not be a violation~~

216 but for the age of the offender.

217 (31) "Substance abuse" is as defined in Section 78-3a-103.

218 ~~[(28)]~~ (32) "Substantiated" or "substantiation" means a judicial finding based on a
219 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
220 identified in a given case shall be considered separately in determining whether there should be
221 a finding of substantiated.

222 ~~[(29)]~~ (33) "Substitute care" means:

223 (a) the placement of a minor in a family home, group care facility, or other placement
224 outside the minor's own home, either at the request of a parent or other responsible relative, or
225 upon court order, when it is determined that continuation of care in the minor's own home
226 would be contrary to the minor's welfare;

227 (b) services provided for a minor awaiting placement; and

228 (c) the licensing and supervision of a substitute care facility.

229 ~~[(30)]~~ (34) "Supported" means a finding by the division based on the evidence
230 available at the completion of an investigation that there is a reasonable basis to conclude that
231 abuse, neglect, or dependency occurred. Each allegation made or identified during the course
232 of the investigation shall be considered separately in determining whether there should be a
233 finding of supported.

234 ~~[(31)]~~ (35) "Temporary custody," with regard to the division, means the custody of a
235 child in the division from the date of the shelter hearing until disposition.

236 ~~[(32)]~~ (36) "Transportation services" means travel assistance given to an individual
237 with escort service, if necessary, to and from community facilities and resources as part of a
238 service plan.

239 ~~[(33)]~~ (37) "Unsubstantiated" means a judicial finding that there is insufficient
240 evidence to conclude that abuse or neglect occurred.

241 ~~[(34)]~~ (38) "Unsupported" means a finding at the completion of an investigation that
242 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
243 However, a finding of unsupported means also that the division worker did not conclude that
244 the allegation was without merit.

245 ~~[(35)]~~ (39) "Without merit" means a finding at the completion of an investigation by
246 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
247 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

248 Section 2. Section **62A-4a-107.5** is amended to read:

62A-4a-107.5. Private recruitment and training of foster care parents and child welfare volunteers -- Extension of immunity.

(1) The division may contract with one or more private, nonprofit organizations to recruit and train foster care parents and child welfare volunteers on a statewide or regional basis.

(2) An organization that contracts with the division pursuant to Subsection (1) shall agree to:

(a) increase the number of licensed and trained foster care parents in the geographic area covered by:

- (i) developing a strategic plan;
- (ii) assessing the needs, perceptions, and qualities of potential foster care parents;
- (iii) assessing the needs, perceptions, and qualities of children in state custody;
- (iv) identifying potential foster care parents through public and private resources;
- (v) screening foster care parent applicants;
- (vi) providing preservice, ongoing, and customized training to foster care parents;
- (vii) developing a competency-based training curriculum with input from public and private resources and approved by the division;
- (viii) focusing training exercises on skill development; and
- (ix) supporting foster care parents by supplying staff support, identifying common issues, encouraging peer support, and connecting available resources;

(b) increase the number of child welfare volunteers in the geographical area covered by:

- (i) developing a strategic plan;
 - (ii) seeking the participation of established volunteer organizations;
 - (iii) designing and offering initial orientation sessions to child welfare volunteers;
 - (iv) informing volunteers of options for service as specified by the division; and
 - (v) facilitating the placement and certification of child welfare volunteers;
- (c) coordinate efforts, where appropriate, with the division;
- (d) seek private contributions in furtherance of the organization's activities under this

Subsection (2);

(e) perform other related services and activities as may be required by the division; and

(f) establish a system for evaluating performance and obtaining feedback on the activities performed pursuant to this Subsection (2).

(3) Notwithstanding Subsection (2), the department shall retain ultimate authority over and responsibility for:

(a) initial and ongoing training content, material, curriculum, and techniques, and certification standards used by an organization; and

(b) screening, investigation, licensing, certification, referral, and placement decisions with respect to any person recruited or trained by an organization.

(4) (a) An organization under contract with the department and its directors, trustees, officers, employees, and agents, whether compensated or not, may not be held civilly liable for any act or omission on a matter for which the department retains ultimate authority and responsibility under Subsection (3).

(b) Nothing in Subsection (4)(a) may be construed as altering the [child] abuse and neglect reporting requirements of Section 62A-4a-403, regardless of whether the facts that give rise to such a report occur before or after a screening, investigation, licensing, or placement decision of the department.

(5) A referring entity or a referring individual that voluntarily and without remuneration assists the organization to identify and recruit foster care parents or child welfare volunteers is not liable in any civil action for any act or omission of:

(a) the referring entity or the referring individual, which is performed in good faith and in furtherance of the entity's assistance to the organization; or

(b) any person directly or indirectly referred to the organization by the entity as a foster care parent or child welfare volunteer, if the referring individual was without actual knowledge of any substantiated fact that would have disqualified the person from such a position at the time the referral was made.

(6) As used in this section:

(a) "referring entity" means:

(i) an incorporated or unincorporated organization or association whether formally incorporated or otherwise established and operating for religious, charitable, or educational purposes which does not distribute any of its income or assets to its members, directors, officers, or other participants;

(ii) any organization which is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from tax under Section 501 of the Internal Revenue Code; or

(iii) any not-for-profit organization which is formed and conducted for public benefit and operated primarily for charitable, civic, educational, religious, benevolent, welfare, or health purposes; and

(b) "referring individual" means an individual:

(i) with the authority to act on behalf of a referring entity in making a referral; and

(ii) who may or may not be compensated by the referring entity.

Section 3. Section **62A-4a-113** is amended to read:

62A-4a-113. Division's enforcement authority -- Responsibility of attorney general to represent division.

(1) The division shall take legal action that is necessary to enforce the provisions of this chapter.

(2) (a) Subject to the provisions of Section 67-5-17, the attorney general shall enforce all provisions of this chapter, in addition to the requirements of Title 78, Chapter 3a, Juvenile Court Act of 1996, relating to protection and custody of abused, neglected, or dependent minors. The attorney general may contract with the local county attorney to enforce the provisions of this chapter and Title 78, Chapter 3a.

(b) It is the responsibility of the attorney general's office to:

(i) advise the division regarding decisions to remove a minor from the minor's home;

(ii) represent the division in all court and administrative proceedings related to [child] abuse, neglect, and dependency including, but not limited to, shelter hearings, dispositional hearings, dispositional review hearings, periodic review hearings, and petitions for termination of parental rights; and

(iii) be available to and advise caseworkers on an ongoing basis.

(c) The attorney general shall designate no less than 16 full-time attorneys to advise and represent the division in abuse, neglect, and dependency proceedings, including petitions for termination of parental rights. Those attorneys shall devote their full time and attention to that representation and, insofar as it is practicable, shall be housed in or near various offices of the division statewide.

(3) As of July 1, 1998, the attorney general's office shall represent the division with

regard to actions involving minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of the division by the juvenile court, and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in this section may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with Section 78-3a-116.

Section 4. Section **62A-4a-201** is amended to read:

62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of state.

(1) (a) Under both the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children. A fundamentally fair process must be provided to parents if the state moves to challenge or interfere with parental rights. A governmental entity must support any actions or allegations made in opposition to the rights and desires of a parent regarding the parent's children by sufficient evidence to satisfy a parent's constitutional entitlement to heightened protection against government interference with the parent's fundamental rights and liberty interests.

(b) The fundamental liberty interest of a parent concerning the care, custody, and management of the parent's children is recognized, protected, and does not cease to exist simply because a parent may fail to be a model parent or because the parent's child is placed in the temporary custody of the state. At all times, a parent retains a vital interest in preventing the irretrievable destruction of family life. Prior to an adjudication of unfitness, government action in relation to parents and their children may not exceed the least restrictive means or alternatives available to accomplish a compelling state interest. Until the state proves parental unfitness, the child and the child's parents share a vital interest in preventing erroneous termination of their natural relationship and the state cannot presume that a child and the child's parents are adversaries.

(c) It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships will usually best be met by the child's natural parents. Additionally, the integrity of the family unit, and the right of parents

to conceive and raise their children have found protection in the due process clause of the Fourteenth Amendment to the United States Constitution. The right of a fit, competent parent to raise the parent's child without undue government interference is a fundamental liberty interest that has long been protected by the laws and Constitution of this state and of the United States.

(d) The state recognizes that:

(i) a parent has the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline the parent's children; and

(ii) the state's role is secondary and supportive to the primary role of a parent.

(e) It is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children.

(f) Subsections (2) through (7) shall be interpreted and applied consistent with this Subsection (1).

(2) It is also the public policy of this state that children have the right to protection from abuse and neglect, and that the state retains a compelling interest in investigating, prosecuting, and punishing abuse and neglect, as defined in this chapter, and in Title 78, Chapter 3a, Juvenile Court Act of 1996. Therefore, the state, as parens patriae, has an interest in and responsibility to protect children whose parents abuse them or do not adequately provide for their welfare. There may be circumstances where a parent's conduct or condition is a substantial departure from the norm and the parent is unable or unwilling to render safe and proper parental care and protection. Under those circumstances, the state may take action for the welfare and protection of the parent's children.

(3) When the division intervenes on behalf of an abused, neglected, or dependent child, it shall take into account the child's need for protection from immediate harm. Throughout its involvement, the division shall utilize the least intrusive and least restrictive means available to protect a child, in an effort to ensure that children are brought up in stable, permanent families, rather than in temporary foster placements under the supervision of the state.

(4) When circumstances within the family pose a threat to the child's immediate safety or welfare, the division may obtain custody of the child for a planned period and place the child in a safe environment, in accordance with the requirements of Title 78, Chapter 3a, Part 3,

404 Abuse, Neglect, and Dependency Proceedings.

405 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to
406 the provisions of Section 62A-4a-203, both the division's and the court's paramount concern
407 shall be the child's health, safety, and welfare. The desires of a parent for the parent's child
408 shall be given full and serious consideration by the division and the court.

409 (6) In cases where actual sexual abuse, sexual exploitation, abandonment, [~~or serious~~
410 ~~physical~~] severe abuse, or severe neglect are established, the state has no duty to make
411 "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home,
412 provide reunification services, or to attempt to rehabilitate the offending parent or parents.
413 This Subsection (6) does not exempt the division from providing court-ordered services.

414 (7) (a) It is the division's obligation, under federal law, to achieve permanency for
415 children who are abused, neglected, or dependent. If the use or continuation of "reasonable
416 efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the
417 permanency plan for a child, then measures shall be taken, in a timely manner, to place the
418 child in accordance with the permanency plan, and to complete whatever steps are necessary to
419 finalize the permanent placement of the child.

420 (b) If, because of [~~his~~] a parent's conduct or condition, [~~a~~] the parent is determined to
421 be unfit or incompetent based on the grounds for termination of parental rights described in
422 Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of
423 the child is of paramount importance, and shall govern in determining whether that parent's
424 rights should be terminated.

425 (8) The state's right to direct or intervene in the provision of medical or mental health
426 care for a child is subject to Subsection 78-3a-118(2)(n).

427 Section 5. Section **62A-4a-202.4** is amended to read:

428 **62A-4a-202.4. Access to criminal background information.**

429 (1) For purposes of background screening and investigation of [~~child~~] abuse or neglect
430 under this chapter and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
431 Proceedings, the division shall have direct access to criminal background information
432 maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

433 (2) The division and the Office of the Guardian Ad Litem Director are also authorized
434 to request the Department of Public Safety to conduct a complete Federal Bureau of

Investigation criminal background check through the national criminal history system (NCIC).

Section 6. Section **62A-4a-202.6** is amended to read:

62A-4a-202.6. Child protective services investigators within the Office of Attorney General -- Authority.

(1) (a) Pursuant to Section 67-5-16 the attorney general may employ, with the consent of the division, child protective services investigators to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(b) (i) Under the direction of the Board of Child and Family Services, the division shall, in accordance with Subsection 62A-4a-409(5), contract with an independent child protective service investigator to investigate reports of abuse or neglect of a child that occur while the child is in the custody of the division.

(ii) The executive director of the department shall designate an entity within the department, other than the division, to monitor the contract for the investigators described in Subsection (1)(b)(i).

(2) The investigators described in Subsection (1) may also investigate allegations of abuse or neglect of a child by a department employee or a licensed substitute care provider.

(3) The investigators described in Subsection (1), if not peace officers, shall have the same rights, duties, and authority of a child protective services investigator employed by the division to:

(a) make a thorough investigation upon receiving either an oral or written report of alleged abuse or neglect of a child, with the primary purpose of that investigation being the protection of the child;

(b) make an inquiry into the child's home environment, emotional, or mental health, the nature and extent of the child's injuries, and the child's physical safety;

(c) make a written report of their investigation, including determination regarding whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a copy of that report to the division within the time mandates for investigations established by the division;

(d) immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or includes an allegation of educational neglect;

(e) enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged [child] abuse or neglect; and

(f) take a child into protective custody, and deliver the child to a law enforcement officer, or to the division. Control and jurisdiction over the child shall be determined by the provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78, Chapter 3a, Juvenile Court Act of 1996, and as otherwise provided by law.

Section 7. Section **62A-4a-203** is amended to read:

62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain child in home -- Exception -- Reasonable efforts for reunification.

(1) Because removal of a child from the child's home affects protected, constitutional rights of the parent and has a dramatic, long-term impact on a child, the division shall:

(a) when possible and appropriate, without danger to the child's welfare, make reasonable efforts to prevent or eliminate the need for removal of a child from the child's home prior to placement in substitute care;

(b) determine whether there is substantial cause to believe that a child has been or is in danger of abuse or neglect, in accordance with the guidelines described in Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from the child's home; and

(c) when it is possible and appropriate, and in accordance with the limitations and requirements of Sections 78-3a-311 and 78-3a-312, make reasonable efforts to make it possible for a child in substitute care to return to the child's home.

(2) (a) In determining the reasonableness of efforts needed to maintain a child in the child's home or to return a child to the child's home, in accordance with Subsection (1)(a) or (c), the child's health, safety, and welfare shall be the paramount concern.

(b) The division shall consider whether the efforts described in Subsections (1) and (2) are likely to prevent abuse or continued neglect of the child.

(3) When removal and placement in substitute care is necessary to protect a child, the efforts described in Subsections (1) and (2):

(a) are not reasonable or appropriate; and

(b) should not be utilized.

(4) Subject to Subsection (5), in cases where sexual abuse, sexual exploitation,

abandonment, ~~[or serious physical]~~ severe abuse, or severe neglect are involved, the state has no duty to make reasonable efforts to, in any way, attempt to:

- (a) maintain a child in the child's home;
- (b) provide reunification services; or
- (c) rehabilitate the offending parent or parents.

(5) Nothing in Subsection (4) exempts the division from providing court ordered services.

Section 8. Section **62A-4a-301** is amended to read:

62A-4a-301. Legislative finding.

The Legislature finds that there is a need to assist private and public agencies in identifying and establishing community-based education, service, and treatment programs to prevent the occurrence and recurrence of ~~[child]~~ abuse and neglect.

It is the purpose of this part to provide a means to increase prevention and treatment programs designed to reduce the occurrence or recurrence of child abuse and neglect.

Section 9. Section **62A-4a-302** is amended to read:

62A-4a-302. Definitions.

As used in this part~~[(1) "Council"]~~, "council" means the Child Abuse Advisory Council established under Section 62A-4a-311.

~~[(2) "Child abuse and neglect" means the same as the term "child abuse or neglect," defined in Section 62A-4a-402.]~~

Section 10. Section **62A-4a-303** is amended to read:

62A-4a-303. Director's responsibility.

The director, under the direction of the board, shall:

(1) contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to establish voluntary community-based educational and service programs designed to reduce the occurrence or recurrence of ~~[child]~~ abuse and neglect;

(2) facilitate the exchange of information between and among groups concerned with families and children;

(3) consult with appropriate state agencies, commissions, and boards to help determine the probable effectiveness, fiscal soundness, and need for proposed education and service programs for the prevention and treatment of ~~[child]~~ abuse and neglect;

(4) develop policies to determine whether programs will be discontinued or will receive continuous funding;

(5) establish flexible fees and fee schedules based on the recipient's ability to pay for part or all of the costs of service received; and

(6) adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, as necessary to carry out the purposes of this part.

Section 11. Section **62A-4a-304** is amended to read:

62A-4a-304. Contracts for services.

(1) (a) Contracts for services to prevent child abuse and neglect shall be awarded on the basis of probability of success, based in part on sound research data.

(b) Each contract entered into by the director under Section 62A-4a-303 shall contain a provision for the evaluation of services provided under the contract.

(2) Contract funds awarded for the treatment of victims of ~~[physical or sexual]~~ abuse and neglect are not a collateral source as described in Section 63-25a-402.

Section 12. Section **62A-4a-305** is amended to read:

62A-4a-305. Prevention and treatment programs.

Programs contracted under this part shall be designed to provide voluntary primary ~~[child]~~ abuse and neglect prevention, and voluntary or court-ordered treatment services, including, without limiting the generality of the foregoing, the following community-based programs:

(1) those relating to prenatal care, perinatal bonding, child growth and development, basic child care, care of children with special needs, and coping with family stress;

(2) those relating to crisis care, aid to parents, ~~[child]~~ abuse counseling, support groups for abusive or potentially abusive parents and their children, and early identification of families where the potential for ~~[child]~~ abuse and neglect exists;

(3) those clearly designed to prevent the occurrence or recurrence of ~~[child]~~ abuse, ~~[child]~~ neglect, sexual ~~[molestation or]~~ abuse, sexual exploitation, medical or educational neglect, and such other programs as the board and council may from time to time consider potentially effective in reducing the incidence of family problems leading to ~~[child]~~ abuse or neglect; and

(4) those designed to establish and assist community resources that prevent ~~[child]~~

559 abuse and neglect.

560 Section 13. Section **62A-4a-306** is amended to read:

561 **62A-4a-306. Programs and services -- Public hearing requirements -- Review by**
562 **local board of education.**

563 (1) Before any [~~child~~] abuse or neglect prevention or treatment program or service may
564 be purchased or contracted for, the board shall conduct a public hearing and the council shall
565 conduct a public hearing, to receive public comment on the specific program or service.

566 (2) Additionally, before any [~~child~~] abuse or neglect prevention or treatment program
567 or service [~~or program~~] which is intended for presentation in public schools may be purchased
568 or contracted for, evidence shall be submitted to the division that the program or service has
569 been approved by the local board of education for each school district which would be utilizing
570 that program or service.

571 Section 14. Section **62A-4a-309** is amended to read:

572 **62A-4a-309. Children's Trust Account.**

573 (1) There shall be a restricted account within the General Fund to be known as the
574 Children's Trust Account. This account is for crediting of contributions from private sources
575 and from appropriate revenues received under Section 26-2-12.5 for [~~child~~] abuse and neglect
576 prevention programs described in Section 62A-4a-305.

577 (2) Money shall be appropriated from the account to the division by the Legislature
578 under the Utah Budgetary Procedures Act, and shall be drawn upon by the director under the
579 direction of the board.

580 (3) The Children's Trust Account may be used only to implement prevention programs
581 described in Section 62A-4a-305, and may only be allocated to entities that provide a
582 one-to-one match, comprising a match from the community of at least 50% in cash and up to
583 50% in in-kind donations, which is 25% of the total funding received from the Children's Trust
584 Account. The entity that receives the statewide evaluation contract is excepted from the
585 cash-match provisions of this Subsection (3).

586 Section 15. Section **62A-4a-311** is amended to read:

587 **62A-4a-311. Child Abuse Advisory Council -- Creation -- Membership --**
588 **Expenses.**

589 (1) (a) There is established the Child Abuse Advisory Council composed of no more

than 25 members who are appointed by the board.

(b) Except as required by Subsection (1)(c), as terms of current council members expire, the board shall appoint each new member or reappointed member to a four-year term.

(c) Notwithstanding the requirements of Subsection (1)(b), the board shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(d) The council shall have geographic, economic, gender, cultural, and philosophical diversity.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(2) The council shall elect a chairperson from its membership at least biannually.

(3) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(4) The council shall hold a public meeting quarterly. Within budgetary constraints, meetings may also be held on the call of the chair, or of a majority of the members. Thirteen members shall constitute a quorum at any meeting and the action of the majority of the members present shall be the action of the council.

(5) The council shall advise the board on matters relating to ~~child~~ abuse and neglect. The council shall also recommend to the board how funds contained in the Children's Trust Account shall be allocated.

Section 16. Section **62A-4a-401** is amended to read:

62A-4a-401. Legislative purpose.

It is the purpose of this part to protect the best interests of children, offer protective services to prevent harm to children, stabilize the home environment, preserve family life whenever possible, and encourage cooperation among the states in dealing with the problem of ~~child~~ abuse or neglect.

Section 17. Section **62A-4a-402** is amended to read:

62A-4a-402. Definitions.

As used in this part:

(1) "A person responsible for a child's care" means the child's parent, guardian, or other person responsible for the child's care, whether in the same home as the child, a relative's home, a group, family, or center day care facility, a foster care home, or a residential institution.

~~[(2) "Child abuse or neglect" means causing harm or threatened harm to a child's health or welfare.]~~

~~[(3) "Harm or threatened harm" means damage or threatened damage to the physical or emotional health and welfare of a child through neglect or abuse, and includes but is not limited to:]~~

~~[(a) causing nonaccidental physical or mental injury;]~~

~~[(b) incest;]~~

~~[(c) sexual abuse;]~~

~~[(d) sexual exploitation;]~~

~~[(e) molestation; or]~~

~~[(f) repeated negligent treatment or maltreatment.]~~

~~[(4) "Incest" means having sexual intercourse with a person whom the perpetrator knows to be his or her ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin. The relationships referred to in this subsection include blood relationships of the whole or half blood without regard to legitimacy, and include relationships of parent and child by adoption, and relationships of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.]~~

~~[(5) "Molestation" means touching the anus or any part of the genitals of a child or otherwise taking indecent liberties with a child, or causing a child to take indecent liberties with the perpetrator or another with the intent to arouse or gratify the sexual desire of any person.]~~

~~[(6) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or molestation directed towards a child.]~~

~~[(7) "Sexual exploitation of a child" means knowingly employing, using, persuading, inducing, enticing, or coercing any child to pose in the nude for the purpose of sexual arousal of any person or for profit, or to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated~~

652 ~~sexual conduct, and includes displaying, distributing, possessing for the purpose of~~
653 ~~distribution, or selling material depicting a child in the nude or engaging in sexual or simulated~~
654 ~~sexual conduct.]~~

655 ~~(8)~~ (2) "Subject" or "subject of the report" means any person reported under this part,
656 including, but not limited to, a child, parent, guardian, or other person responsible for a child's
657 care.

658 Section 18. Section **62A-4a-403** is amended to read:

659 **62A-4a-403. Reporting requirements.**

660 (1) (a) Except as provided in Subsection (2), when any person including persons
661 licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 31b, Nurse
662 Practice Act, has reason to believe that a child has been subjected to [~~incest, molestation,~~
663 ~~sexual exploitation, sexual abuse, physical abuse,~~] abuse or neglect, or who observes a child
664 being subjected to conditions or circumstances which would reasonably result in [~~sexual abuse,~~
665 ~~physical abuse,~~] abuse or neglect, [~~he~~] that person shall immediately notify the nearest peace
666 officer, law enforcement agency, or office of the division. [~~On~~]

667 (b) Upon receipt of [this notice] the notification described in Subsection (1)(a), the
668 peace officer or law enforcement agency shall immediately notify the nearest office of the
669 division. If an initial report of [~~child~~] abuse or neglect is made to the division, the division
670 shall immediately notify the appropriate local law enforcement agency. The division shall, in
671 addition to its own investigation, comply with and lend support to investigations by law
672 enforcement undertaken pursuant to a report made under this section.

673 (2) [~~The~~] Subject to Subsection (3), the notification requirements of Subsection (1) do
674 not apply to a clergyman or priest, without the consent of the person making the confession,
675 with regard to any confession made to [~~him in his~~] the clergyman or priest in the professional
676 character of the clergyman or priest in the course of discipline enjoined by the church to which
677 [~~he~~] the clergyman or priest belongs, if:

678 (a) the confession was made directly to the clergyman or priest by the perpetrator; and

679 (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to
680 maintain the confidentiality of that confession.

681 (3) (a) When a clergyman or priest receives information about abuse or neglect from
682 any source other than confession of the perpetrator, [~~he~~] the clergyman or priest is required to

give notification on the basis of that information even though ~~he~~ the clergyman or priest may have also received a report of abuse or neglect from the confession of the perpetrator.

(b) Exemption of notification requirements for a clergyman or priest does not exempt a clergyman or priest from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

Section 19. Section **62A-4a-405** is amended to read:

62A-4a-405. Death of child -- Reporting requirements.

(1) Any person who has reason to believe that a child has died as a result of ~~child~~ abuse or neglect shall report that fact to:

(a) the local law enforcement agency, who shall report to the county attorney or district attorney as provided under Section 17-18-1 or 17-18-1.7; and ~~to~~

(b) the appropriate medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act. ~~The~~

(2) After receiving a report described in Subsection (1), the medical examiner shall investigate and report ~~his~~ the medical examiner's findings to:

(a) the police~~;~~;

(b) the appropriate county attorney or district attorney~~;~~;

(c) the attorney general's office~~;~~;

(d) the division~~;~~; and

(e) if the institution making the report is a hospital, to that hospital.

Section 20. Section **62A-4a-406** is amended to read:

62A-4a-406. Photographs.

(1) Any physician, surgeon, medical examiner, peace officer, law enforcement official, or public health officer or official may take photographs of the areas of trauma visible on a child and, if medically indicated, perform radiological examinations.

(2) Photographs may be taken of the premises or of objects relevant to a reported circumstance of ~~child~~ abuse or neglect.

(3) Photographs or X-rays, and all other medical records pertinent to an investigation for ~~child~~ abuse or neglect shall be made available to the division, law enforcement officials, and the court.

Section 21. Section **62A-4a-409** is amended to read:

62A-4a-409. Investigation by division -- Temporary protective custody --**Preremoval interviews of children.**

(1) (a) The division shall make a thorough preremoval investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency exists.

(b) The primary purpose of the investigation described in Subsection (1)(a) shall be protection of the child.

(2) The preremoval investigation described in Subsection (1)(a) shall include the same investigative requirements described in Section 62A-4a-202.3.

(3) The division shall make a written report of its investigation that shall include a determination regarding whether the alleged abuse or neglect is supported, unsupported, or without merit.

(4) (a) The division shall use an interdisciplinary approach when appropriate in dealing with reports made under this part.

(b) For this purpose, the division shall convene appropriate interdisciplinary "child protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination services.

(c) A representative of the division shall serve as the team's coordinator and chair. Members of the team shall serve at the coordinator's invitation. Whenever possible, the team shall include representatives of:

(i) health, mental health, education, and law enforcement agencies;

(ii) the child;

(iii) parent and family support groups unless the parent is alleged to be the perpetrator;

and

(iv) other appropriate agencies or individuals.

(5) In any case where the division supervises, governs, or directs the affairs of any individual, institution, or facility that is alleged to be involved in acts or omissions of [child] abuse or neglect, the investigation of the reported [child] abuse or neglect shall be conducted by an agency other than the division.

(6) If a report of neglect is based upon or includes an allegation of educational neglect,

the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103.

(7) When the division completes its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.

(8) Division workers or other child protection team members have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged [child] abuse or neglect, upon notice to parents of their rights under the Child Abuse Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

(9) With regard to any interview of a child prior to removal of that child from the child's home:

(a) except as provided in Subsection (9)(b) or (c), the division shall inform a parent of the child prior to the interview of:

(i) the specific allegations concerning the child; and

(ii) the time and place of the interview;

(b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division is not required to comply with Subsection (9)(a);

(c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is unknown, the division may conduct a minimal interview or conversation, not to exceed 15 minutes, with the child prior to complying with Subsection (9)(a);

(d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but in no case later than 24 hours after the interview has taken place;

(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and

(f) the child shall be allowed to have a support person of the child's choice present, who:

(i) may include:

(A) a school teacher;

(B) an administrator;

(C) a guidance counselor;

(D) a child care provider;

(E) a family member;

(F) a family advocate; or

(G) clergy; and

(ii) may not be a person who is alleged to be, or potentially may be, the perpetrator.

(10) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3, a division worker or child protection team member may take a child into protective custody and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from the child's original environment. Control and jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile Court Act of 1996, and as otherwise provided by law.

(11) With regard to cases in which law enforcement has or is conducting an investigation of alleged abuse or neglect of a child:

(a) the division shall coordinate with law enforcement to ensure that there is an adequate safety plan to protect the child from further abuse or neglect; and

(b) the division is not required to duplicate an aspect of the investigation that, in the division's determination, has been satisfactorily completed by law enforcement.

Section 22. Section **62A-4a-411** is amended to read:

62A-4a-411. Failure to report -- Criminal penalty.

Any person, official, or institution required to report a case of suspected [~~child abuse,~~
~~child sexual~~] abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, who willfully fails to do so is guilty of a class B misdemeanor. Action for failure to report must be commenced within four years from the date of knowledge of the offense and the willful failure to report.

Section 23. Section **62A-4a-412** is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected

807 [child] abuse or neglect;

808 (b) a physician who reasonably believes that a child may be the subject of abuse or
809 neglect;

810 (c) an agency that has responsibility or authority to care for, treat, or supervise a minor
811 who is the subject of a report;

812 (d) a contract provider that has a written contract with the division to render services to
813 a minor who is the subject of a report;

814 (e) any subject of the report, the natural parents of the child, and the guardian ad litem;

815 (f) a court, upon a finding that access to the records may be necessary for the
816 determination of an issue before the court, provided that in a divorce, custody, or related
817 proceeding between private parties, the record alone is:

818 (i) limited to objective or undisputed facts that were verified at the time of the
819 investigation; and

820 (ii) devoid of conclusions drawn by the division or any of the division's workers on the
821 ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or
822 neglect of another person;

823 (g) an office of the public prosecutor or its deputies in performing an official duty;

824 (h) a person authorized by a Children's Justice Center, for the purposes described in
825 Section 67-5b-102;

826 (i) a person engaged in bona fide research, when approved by the director of the
827 division, if the information does not include names and addresses;

828 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
829 district, for the purpose of evaluating whether an individual should be permitted to obtain or
830 retain a license as an educator or serve as an employee or volunteer in a school, limited to
831 information with substantiated findings involving an alleged sexual offense, an alleged felony
832 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
833 Chapter 5, Offenses Against the Person, and with the understanding that the office must
834 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond
835 to the report before making a decision concerning licensure or employment;

836 (k) any person identified in the report as a perpetrator or possible perpetrator of [child]
837 abuse or neglect, after being advised of the screening prohibition in Subsection (2);

(l) a person filing a petition for a child protective order on behalf of a child who is the subject of the report; and

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

(2) (a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of ~~child~~ abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but including this chapter and Title 63, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

(i) identify the referent;

(ii) impede a criminal investigation; or

(iii) endanger a person's safety.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Section 78-30-3.5:

(a) may provide this report to the person who is the subject of the report; and

(b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Section 24. Section **62A-4a-414** is amended to read:

62A-4a-414. Interviews of children -- Recording required -- Exceptions.

(1) (a) Except as provided in Subsection (4), interviews of children during an investigation in accordance with Section 62A-4a-409, and involving allegations of sexual abuse [~~or serious physical abuse~~], sexual exploitation, severe abuse, or severe neglect of a child, shall be conducted only under the following conditions:

(i) the interview shall be recorded visually and aurally on film, videotape, or by other electronic means;

(ii) both the interviewer and the child shall be simultaneously recorded and visible on the final product;

(iii) the time and date of the interview shall be continuously and clearly visible to any subsequent viewer of the recording; and

(iv) the recording equipment shall run continuously for the duration of the interview.

(b) This Subsection (1) does not apply to initial or minimal interviews conducted in accordance with Subsection 62A-4a-409(9)(b) or (c).

(2) Interviews conducted in accordance with Subsection (1) shall be carried out in an existing Children's Justice Center or in a soft interview room, when available.

(a) If the Children's Justice Center or a soft interview room is not available, the interviewer shall use the best setting available under the circumstances.

(b) Except as provided in Subsection (4), if the equipment required under Subsection (1) is not available, the interview shall be audiotaped, provided that the interviewer shall clearly state at the beginning of the tape:

(i) the time, date, and place of the interview;

(ii) the full name and age of the child being interviewed; and

(iii) that the equipment required under Subsection (1) is not available and why.

(3) Except as provided in Subsection (4), all other investigative interviews shall be audiotaped using electronic means. At the beginning of the tape, the worker shall state clearly

the time, date, and place of the meeting, and the full name and age of the child in attendance.

(4) (a) Subject to Subsection (4)(b), an interview described in this section may be conducted without being taped if the child:

(i) is at least nine years old;

(ii) refuses to have the interview audio taped; and

(iii) refuses to have the interview video taped.

(b) If, pursuant to Subsection (4)(a), an interview is conducted without being taped, the child's refusal shall be documented as follows:

(i) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or

(ii) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:

(A) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or

(B) if complying with Subsection (4)(b)(ii)(A) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.

(c) The division shall track the number of interviews under this section that are not taped, and the number of refusals that are not taped, for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other interviewers.

Section 25. Section **62A-4a-802** is amended to read:

62A-4a-802. Safe relinquishment of a newborn child.

(1) (a) A parent or a parent's designee may safely relinquish a newborn child at a hospital in accordance with the provisions of this part and retain complete anonymity, so long as the child has not been subject to abuse or neglect.

(b) Safe relinquishment of a newborn child who has not otherwise been subject to abuse or neglect shall not, in and of itself, constitute neglect as defined in Section ~~62A-4a-101~~ 78-3a-103, and the child shall not be considered a neglected child, as defined in Section 78-3a-103, so long as the relinquishment is carried out in substantial compliance with

931 the provisions of this part.

932 (2) (a) Personnel employed by a hospital shall accept a newborn child that is
933 relinquished pursuant to the provisions of this part, and may presume that the person
934 relinquishing is the child's parent or the parent's designee.

935 (b) The person receiving the newborn child may request information regarding the
936 parent and newborn child's medical histories, and identifying information regarding the
937 nonrelinquishing parent of the child.

938 (c) The division shall provide hospitals with medical history forms and stamped
939 envelopes addressed to the division that a hospital may provide to a person relinquishing a
940 child pursuant to the provisions of this part.

941 (d) Personnel employed by a hospital shall:

942 (i) provide any necessary medical care to the child and notify the division as soon as
943 possible, but no later than 24 hours after receipt of the child; and

944 (ii) prepare a birth certificate or foundling birth certificate if parentage is unknown and
945 file with the Office of Vital Records and Statistics.

946 (e) A hospital and personnel employed by a hospital are immune from any civil or
947 criminal liability arising from accepting a newborn child if the personnel employed by the
948 hospital substantially comply with the provisions of this part and medical treatment is
949 administered according to standard medical practice.

950 (3) The division shall assume care and custody of the child immediately upon notice
951 from the hospital.

952 (4) So long as the division determines there is no abuse or neglect of the newborn
953 child, neither the newborn child nor the child's parents are subject to:

954 (a) the provisions of Part 2 of this chapter, Child Welfare Services;

955 (b) the investigation provisions contained in Section 62A-4a-409; or

956 (c) the provisions of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
957 Proceedings.

958 (5) Unless identifying information relating to the nonrelinquishing parent of the
959 newborn child has been provided:

960 (a) the division shall work with local law enforcement and the Bureau of Criminal
961 Identification within the Department of Public Safety in an effort to ensure that the newborn

child has not been identified as a missing child;

(b) the division shall immediately place or contract for placement of the newborn child in a potential adoptive home and, within ten days after receipt of the child, file a petition for termination of parental rights in accordance with Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act;

(c) the division shall direct the Office of Vital Records and Statistics to conduct a search for a birth certificate for the child and an Initiation of Proceedings to Establish Paternity Registry for unmarried biological fathers maintained by the Office of Vital Records and Statistics within the Department of Health and provide notice to each potential father identified on the registry. Notice of termination of parental rights proceedings shall be provided in the same manner as is utilized for any other termination proceeding in which the identity of the child's parents is unknown;

(d) if no person has affirmatively identified himself or herself within two weeks after notice is complete and established paternity by scientific testing within as expeditious a time frame as practicable, a hearing on the petition for termination of parental rights shall be scheduled; and

(e) if a nonrelinquishing parent is not identified, relinquishment of a newborn child pursuant to the provisions of this part shall be considered grounds for termination of parental rights of both the relinquishing and nonrelinquishing parents under Section 78-3a-407.

(6) If at any time prior to the adoption, a court finds it is in the best interest of the child, the court shall deny the petition for termination of parental rights.

(7) The division shall provide for, or contract with a licensed child-placing agency to provide for expeditious adoption of the newborn child.

(8) So long as the person relinquishing a newborn child is the child's parent or designee, and there is no abuse or neglect, safe relinquishment of a newborn child in substantial compliance with the provisions of this part is an affirmative defense to any potential criminal liability for abandonment or neglect relating to that relinquishment.

Section 26. Section **62A-4a-1002** is amended to read:

62A-4a-1002. Definitions.

As used in this part:

(1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect"

993 means:

994 (i) if committed by a person 18 years of age or older:

995 (A) ~~[severe or]~~ chronic ~~[physical]~~ abuse;

996 (B) severe abuse;

997 ~~[(B)]~~ (C) sexual abuse;

998 ~~[(C)]~~ (D) sexual exploitation;

999 ~~[(D)]~~ (E) abandonment;

1000 ~~[(E) medical neglect resulting in death, disability, or serious illness;]~~

1001 (F) chronic neglect; or

1002 (G) severe neglect; or

1003 ~~[(H) chronic emotional abuse; or]~~

1004 ~~[(I) severe emotional abuse; or]~~

1005 (ii) if committed by a person under the age of 18:

1006 (A) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child

1007 which indicates a significant risk to other children; or

1008 (B) sexual behavior with or upon another child which indicates a significant risk to

1009 other children.

1010 (b) "Severe type of child abuse or neglect" does not include:

1011 (i) the use of reasonable and necessary physical restraint or force by an educator in

1012 accordance with Subsection 53A-11-802(2) or Section 76-2-401;

1013 (ii) a person's conduct that:

1014 (A) is justified under Section 76-2-401; or

1015 (B) constitutes the use of reasonable and necessary physical restraint or force in

1016 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or

1017 other dangerous object in the possession or under the control of a child or to protect the child or

1018 another person from physical injury; or

1019 (iii) a health care decision made for a child by the child's parent or guardian, unless,

1020 subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by

1021 clear and convincing evidence, that the health care decision is not reasonable and informed.

1022 (2) "Significant risk" means a risk of harm that is determined to be significant in

1023 accordance with risk assessment tools and rules established by the division that focus on:

- 1024 (a) age;
- 1025 (b) social factors;
- 1026 (c) emotional factors;
- 1027 (d) sexual factors;
- 1028 (e) intellectual factors;
- 1029 (f) family risk factors; and
- 1030 (g) other related considerations.

1031 Section 27. Section **62A-4a-1003** is amended to read:

1032 **62A-4a-1003. Management Information System -- Requirements -- Contents --**
1033 **Purpose -- Access.**

1034 (1) (a) The division shall develop and implement a Management Information System
1035 that meets the requirements of this section and the requirements of federal law and regulation.

1036 (b) The information and records contained in the Management Information System:

1037 (i) are protected records under Title 63, Chapter 2, Government Records Access and
1038 Management Act; and

1039 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with
1040 statutory authorization under Title 63, Chapter 2, Government Records Access and
1041 Management Act, to review the information and records described in this Subsection (1)(b).

1042 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
1043 Subsection (1)(b) are available to a person:

1044 (i) as provided under Subsection (6) or Section 62A-4a-1006; or

1045 (ii) who has specific statutory authorization to access the information or records for the
1046 purpose of assisting the state with state and federal requirements to maintain information solely
1047 for the purpose of protecting minors and providing services to families in need.

1048 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in
1049 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,
1050 be provided by the division:

1051 (i) to comply with [child] abuse and neglect registry checks requested by other states;
1052 and

1053 (ii) to the United States Department of Health and Human Services for purposes of
1054 maintaining an electronic national registry of substantiated cases of [child] abuse and neglect.

(2) With regard to all child welfare cases, the Management Information System shall provide each caseworker and the department's office of licensing, exclusively for the purposes of foster parent licensure and monitoring, with a complete history of each child in that worker's caseload, including:

(a) a record of all past action taken by the division with regard to that child and the child's siblings;

(b) the complete case history and all reports and information in the control or keeping of the division regarding that child and the child's siblings;

(c) the number of times the child has been in the custody of the division;

(d) the cumulative period of time the child has been in the custody of the division;

(e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including:

(i) for each report, documentation of the:

(A) latest status; or

(B) final outcome or determination; and

(ii) information that indicates whether each report was found to be:

(A) supported;

(B) unsupported;

(C) substantiated by a juvenile court;

(D) unsubstantiated by a juvenile court; or

(E) without merit;

(f) the number of times the child's parent or parents failed any child and family plan;

and

(g) the number of different caseworkers who have been assigned to that child in the past.

(3) The division's Management Information System shall:

(a) contain all key elements of each family's current child and family plan, including:

(i) the dates and number of times the plan has been administratively or judicially reviewed;

(ii) the number of times the parent or parents have failed that child and family plan;

and

1086 (iii) the exact length of time the child and family plan has been in effect; and

1087 (b) alert caseworkers regarding deadlines for completion of and compliance with
1088 policy, including child and family plans.

1089 (4) With regard to all child protective services cases, the Management Information
1090 System shall:

1091 (a) monitor the compliance of each case with:

1092 (i) division rule and policy;

1093 (ii) state law; and

1094 (iii) federal law and regulation; and

1095 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or
1096 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
1097 the alleged perpetrator.

1098 (5) Except as provided in Subsection (6) regarding contract providers and Section
1099 62A-4a-1006 regarding limited access to the Licensing Information System, all information
1100 contained in the division's Management Information System is available to the department,
1101 upon the approval of the executive director, on a need-to-know basis.

1102 (6) (a) Subject to this Subsection (6), the division may allow its contract providers,
1103 court clerks designated by the Administrative Office of the Courts, and the Office of the
1104 Guardian Ad Litem to have limited access to the Management Information System.

1105 (b) A division contract provider has access only to information about a person who is
1106 currently receiving services from that specific contract provider.

1107 (c) (i) Designated court clerks may only have access to information necessary to
1108 comply with Subsection 78-3h-102(2).

1109 (ii) The Office of the Guardian Ad Litem may access only the information that:

1110 (A) relates to children and families where the Office of the Guardian Ad Litem is
1111 appointed by a court to represent the interests of the children; and

1112 (B) except as provided in Subsection (6)(d), is entered into the Management
1113 Information System on or after July 1, 2004.

1114 (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of the Guardian Ad Litem
1115 shall have access to all [child] abuse and neglect referrals about children and families where the
1116 office has been appointed by a court to represent the interests of the children, regardless of the

1117 date that the information is entered into the Management Information System.

1118 (e) Each contract provider and designated representative of the Office of the Guardian
1119 Ad Litem who requests access to information contained in the Management Information
1120 System shall:

1121 (i) take all necessary precautions to safeguard the security of the information contained
1122 in the Management Information System;

1123 (ii) train its employees regarding:

1124 (A) requirements for protecting the information contained in the Management
1125 Information System as required by this chapter and under Title 63, Chapter 2, Government
1126 Records Access and Management Act; and

1127 (B) the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper
1128 release of information; and

1129 (iii) monitor its employees to ensure that they protect the information contained in the
1130 Management Information System as required by law.

1131 (f) The division shall take reasonable precautions to ensure that its contract providers
1132 comply with the requirements of this Subsection (6).

1133 (7) The division shall take all necessary precautions, including password protection and
1134 other appropriate and available technological techniques, to prevent unauthorized access to or
1135 release of information contained in the Management Information System.

1136 Section 28. Section **62A-4a-1005** is amended to read:

1137 **62A-4a-1005. Supported finding of a severe type of child abuse or neglect --**
1138 **Notation in Licensing Information System -- Juvenile court petition or notice to alleged**
1139 **perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.**

1140 (1) If the division makes a supported finding that a person committed a severe type of
1141 child abuse or neglect, the division shall:

1142 (a) serve notice of the finding on the alleged perpetrator;

1143 (b) enter the following information into the Licensing Information System created in
1144 Section 62A-4a-1006:

1145 (i) the name and other identifying information of the perpetrator with the supported
1146 finding, without identifying the person as a perpetrator or alleged perpetrator; and

1147 (ii) a notation to the effect that an investigation regarding the person is pending; and

1148 (c) if the division considers it advisable, file a petition for substantiation within one
1149 year of the supported finding.

1150 (2) The notice referred to in Subsection (1)(a):

1151 (a) shall state that:

1152 (i) the division has conducted an investigation regarding alleged [~~child~~] abuse or
1153 neglect;

1154 (ii) the division has made a supported finding that the alleged perpetrator described in
1155 Subsection (1) committed a severe type of child abuse or neglect;

1156 (iii) facts gathered by the division support the supported finding;

1157 (iv) as a result of the supported finding, the alleged perpetrator's name and other
1158 identifying information have been listed in the Licensing Information System in accordance
1159 with Subsection (1)(b);

1160 (v) the alleged perpetrator may be disqualified from adopting a child or being licensed
1161 by:

1162 (A) the department;

1163 (B) a human services licensee;

1164 (C) a child care provider or program; or

1165 (D) a covered health care facility;

1166 (vi) the alleged perpetrator has the rights described in Subsection (3); and

1167 (vii) failure to take either action described in Subsection (3)(a) within one year after
1168 service of the notice will result in the action described in Subsection (3)(b);

1169 (b) shall include a general statement of the nature of the findings; and

1170 (c) may not include:

1171 (i) the name of a victim or witness; or

1172 (ii) any privacy information related to the victim or a witness.

1173 (3) (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator
1174 shall have the right to:

1175 (i) file a written request asking the division to review the findings made under
1176 Subsection (1);

1177 (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court
1178 under Section 78-3a-320; or

1179 (iii) sign a written consent to:
1180 (A) the supported finding made under Subsection (1); and
1181 (B) entry into the Licensing Information System of:
1182 (I) the alleged perpetrator's name; and
1183 (II) other information regarding the supported finding made under Subsection (1).
1184 (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the
1185 information described in Subsection (1)(b) shall remain in the Licensing Information System:
1186 (i) if the alleged perpetrator fails to take the action described in Subsection (3)(a)
1187 within one year after service of the notice described in Subsections (1)(a) and (2);
1188 (ii) during the time that the division awaits a response from the alleged perpetrator
1189 pursuant to Subsection (3)(a); and
1190 (iii) until a court determines that the severe type of child abuse or neglect upon which
1191 the Licensing Information System entry was based is unsubstantiated or without merit.
1192 (c) The alleged perpetrator has no right to petition the juvenile court under Subsection
1193 (3)(a)(ii) if the court previously held a hearing on the same alleged incident of abuse or neglect
1194 pursuant to the filing of a petition under Section 78-3a-305 by some other party.
1195 (d) Consent under Subsection (3)(a)(iii) by a child shall be given by the child's parent
1196 or guardian.
1197 (e) Regardless of whether an appeal on the matter is pending:
1198 (i) an alleged perpetrator's name and the information described in Subsection (1)(b)
1199 shall be removed from the Licensing Information System if the severe type of child abuse or
1200 neglect upon which the Licensing Information System entry was based:
1201 (A) is found to be unsubstantiated or without merit by the juvenile court under Section
1202 78-3a-320; or
1203 (B) is found to be substantiated, but is subsequently reversed on appeal; and
1204 (ii) an alleged perpetrator's name and information that is removed from the Licensing
1205 Information System under Subsection (3)(e)(i) shall be placed back on the Licensing
1206 Information System if the court action that was the basis for removing the alleged perpetrator's
1207 name and information is subsequently reversed on appeal.
1208 (4) Upon the filing of a petition under Subsection (1)(c), the juvenile court shall make
1209 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections

1210 78-3a-320(1) and (2).

1211 (5) Service of the notice described in Subsections (1)(a) and (2):

1212 (a) shall be personal service in accordance with Utah Rules of Civil Procedure, Rule 4;

1213 and

1214 (b) does not preclude civil or criminal action against the alleged perpetrator.

1215 Section 29. Section **62A-4a-1006** is amended to read:

1216 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**

1217 **-- Protected record -- Access -- Criminal penalty.**

1218 (1) (a) The division shall maintain a sub-part of the Management Information System

1219 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information

1220 System, to be used:

1221 (i) for licensing purposes; or

1222 (ii) as otherwise specifically provided for by law.

1223 (b) The Licensing Information System shall include only the following information:

1224 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

1225 (ii) consented-to supported findings by alleged perpetrators under Subsection

1226 62A-4a-1005(3)(a)(iii); and

1227 (iii) the information in the licensing part of the division's Management Information

1228 System as of May 6, 2002.

1229 (2) Notwithstanding Subsection (1), the department's access to information in the

1230 Management Information System for the licensure and monitoring of foster parents is governed

1231 by Sections 62A-4a-1003 and 62A-2-121.

1232 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the

1233 juvenile court under Section 78-3a-320, the division shall:

1234 (a) promptly amend the Licensing Information System; and

1235 (b) enter the information in the Management Information System.

1236 (4) (a) Information contained in the Licensing Information System is classified as a

1237 protected record under Title 63, Chapter 2, Government Records Access and Management Act.

1238 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government

1239 Records Access and Management Act, the information contained in the Licensing Information

1240 System may only be used or disclosed as specifically provided in this chapter and Section

1241 62A-2-121.

1242 (c) The information described in Subsection (4)(b) is accessible only to:

1243 (i) the Office of Licensing within the department:

1244 (A) for licensing purposes; or

1245 (B) as otherwise specifically provided for by law;

1246 (ii) the division to:

1247 (A) screen a person at the request of the Office of the Guardian Ad Litem Director:

1248 (I) at the time that person seeks a paid or voluntary position with the Office of the

1249 Guardian Ad Litem Director; and

1250 (II) on an annual basis, throughout the time that the person remains with the Office of

1251 Guardian Ad Litem Director; and

1252 (B) respond to a request for information from a person whose name is listed in the

1253 Licensing Information System;

1254 (iii) two persons designated by and within the Department of Health, only for the

1255 following purposes:

1256 (A) licensing a child care program or provider; or

1257 (B) determining whether a person associated with a covered health care facility, as

1258 defined by the Department of Health by rule, who provides direct care to a child, has a

1259 supported finding of a severe type of child abuse or neglect; and

1260 (iv) the department, as specifically provided in this chapter.

1261 (5) The two persons designated by the Department of Health under Subsection

1262 (4)(c)(iii) shall adopt measures to:

1263 (a) protect the security of the Licensing Information System; and

1264 (b) strictly limit access to the Licensing Information System to those persons

1265 designated by statute.

1266 (6) All persons designated by statute as having access to information contained in the

1267 Licensing Information System shall receive training from the department with respect to:

1268 (a) accessing the Licensing Information System;

1269 (b) maintaining strict security; and

1270 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the

1271 improper release of information.

(7) (a) A person, except those authorized by this chapter, may not request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of ~~child~~ abuse or neglect.

(b) A person who requests information knowing that it is a violation of this Subsection (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

Section 30. Section **62A-4a-1007** is amended to read:

62A-4a-1007. False reports -- Penalties.

(1) The division shall send a certified letter to any person who submits a report of ~~child~~ abuse or neglect that is placed into or included in any part of the Management Information System, if the division determines, at the conclusion of its investigation, that:

(a) the report is false;

(b) it is more likely than not that the person knew the report was false at the time that person submitted the report; and

(c) the reporting person's address is known or reasonably available.

(2) The letter shall inform the reporting person of:

(a) the division's determination made under Subsection (1);

(b) the penalty for submitting false information under Section 76-8-506 and other applicable laws; and

(c) the obligation of the division to inform law enforcement and the person alleged to have committed abuse or neglect:

(i) in the present instance if law enforcement considers an immediate referral of the reporting person to law enforcement to be justified by the facts; or

(ii) if the reporting person submits a subsequent false report involving the same alleged perpetrator or victim.

(3) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1), if an immediate referral is justified by the facts.

(4) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1) if a second letter is sent to the reporting person involving the same alleged perpetrator or victim.

(5) The division shall determine, in consultation with law enforcement:

1303 (a) what information should be given to an alleged perpetrator relating to a false report;
1304 and

1305 (b) whether good cause exists, as defined by the division by rule, for not informing an
1306 alleged perpetrator about a false report.

1307 (6) Nothing in this section may be construed as requiring the division to conduct an
1308 investigation beyond what is described in Subsection (1), to determine whether or not a report
1309 is false.

1310 Section 31. Section **62A-4a-1009** is amended to read:

1311 **62A-4a-1009. Notice and opportunity to challenge supported finding in**
1312 **Management Information System -- Right of judicial review.**

1313 (1) (a) Except as provided in Subsection (2), the division shall send a notice of agency
1314 action to a person with respect to whom the division makes a supported finding. In addition, if
1315 the alleged perpetrator is under the age of 18, the division shall:

1316 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

1317 (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that
1318 lives at a different address, unless there is good cause, as defined by rule, for not sending a
1319 notice to a parent or guardian.

1320 (b) Nothing in this section may be construed as affecting:

1321 (i) the manner in which the division conducts an investigation; or

1322 (ii) the use or effect, in any other setting, of a supported finding by the division at the
1323 completion of an investigation for any purpose other than for notification under Subsection (1)
1324 (a).

1325 (2) Subsection (1) does not apply to a person who has been served with notice under
1326 Subsection 62A-4a-1005(1)(a).

1327 (3) The notice described in Subsection (1) shall state:

1328 (a) that the division has conducted an investigation regarding alleged [~~child~~] abuse,
1329 neglect, or dependency;

1330 (b) that the division has made a supported finding of abuse, neglect, or dependency;

1331 (c) that facts gathered by the division support the supported finding;

1332 (d) that the person has the right to request:

1333 (i) a copy of the report; and

(ii) an opportunity to challenge the supported finding by the division; and

(e) that failure to request an opportunity to challenge the supported finding within 30 days of receiving the notice will result in an unappealable supported finding of [child] abuse, neglect, or dependency unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

(4) (a) A person may make a request to challenge a supported finding within 30 days of a notice being received under this section.

(b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

(5) (a) In an adjudicative proceeding held pursuant to this section, the division shall have the burden of proving, by a preponderance of the evidence, that [child] abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred.

(b) Any party shall have the right of judicial review of final agency action, in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(6) Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding in accordance with this section:

(a) may not further challenge the finding; and

(b) shall have no right to:

(i) agency review of the finding;

(ii) an adjudicative hearing on the finding; or

(iii) judicial review of the finding.

(7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a request under Subsection (4) to challenge a supported finding if a court of competent jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which was also the subject of the supported finding.

(b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

(c) An adjudicative proceeding under Subsection (5) may be stayed during the time a judicial action on the same matter is pending.

(8) Pursuant to Section 78-3a 320, an adjudicative proceeding on a supported finding of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a supported finding of a severe type of child abuse or neglect.

Section 32. Section **62A-4a-1010** is amended to read:

62A-4a-1010. Notice and opportunity for court hearing for persons listed in Licensing Information System.

(1) Persons whose names were listed on the Licensing Information System as of May 6, 2002 and who have not been the subject of a court determination with respect to the alleged incident of abuse or neglect may at any time:

(a) request review by the division of their case and removal of their name from the Licensing Information System pursuant to Subsection (3); or

(b) file a petition for an evidentiary hearing and a request for a finding of unsubstantiated or without merit.

(2) Subsection (1) does not apply to an individual who has been the subject of any of the following court determinations with respect to the alleged incident of abuse or neglect:

(a) conviction;

(b) adjudication under Title 78, Chapter 3a, Juvenile Court Act of 1996;

(c) plea of guilty;

(d) plea of guilty and mentally ill; or

(e) no contest.

(3) If an alleged perpetrator listed on the Licensing Information System prior to May 6, 2002 requests removal of the alleged perpetrator's name from the Licensing Information System, the division shall, within 30 days:

(a) (i) review the case to determine whether the incident of alleged abuse or neglect qualifies as:

(A) a severe type of child abuse or neglect;

(B) chronic [physical] abuse; or

~~[(C) chronic emotional abuse; or]~~

~~[(D)]~~ (C) chronic neglect; and

(ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect

1396 described in Subsections (3)(a)(i)(A) through (D), remove the alleged perpetrator's name from
1397 the Licensing Information System; or

1398 (b) determine whether to file a petition for substantiation.

1399 (4) If the division decides to file a petition, that petition must be filed no more than 14
1400 days after the decision.

1401 (5) The juvenile court shall act on the petition as provided in Subsection 78-3a-320(3).

1402 (6) If a person whose name appears on the Licensing Information System prior to May
1403 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged
1404 perpetrator's application for clearance to work with children or vulnerable adults is pending, the
1405 court shall hear the matter on an expedited basis.

1406 Section 33. Section **76-7-304** is amended to read:

1407 **76-7-304. Considerations by physician -- Notice to a parent or guardian --**

1408 **Exceptions.**

1409 (1) As used in this section:

1410 (a) "abuse" is as defined in Section ~~[62A-4a-101]~~ 78-3a-103; and

1411 (b) "minor" means a person who is:

1412 (i) under 18 years of age;

1413 (ii) unmarried; and

1414 (iii) not emancipated.

1415 (2) To enable the physician to exercise the physician's best medical judgment, the
1416 physician shall consider all factors relevant to the well-being of the woman upon whom the
1417 abortion is to be performed including:

1418 (a) her physical, emotional and psychological health and safety;

1419 (b) her age; and

1420 (c) her familial situation.

1421 (3) Subject to Subsection (4), at least 24 hours before a physician performs an abortion
1422 on a minor, the physician shall notify a parent or guardian of the minor that the minor intends
1423 to have an abortion.

1424 (4) A physician is not required to comply with Subsection (3) if:

1425 (a) subject to Subsection (5)(a):

1426 (i) a medical condition exists that, on the basis of the physician's good faith clinical

judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a serious risk of substantial and irreversible impairment of a major bodily function of the minor; and

(ii) there is not sufficient time to give the notice required under Subsection (3) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (4)(a)(i);

(b) subject to Subsection (5)(b):

(i) the physician complies with Subsection (6); and

(ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a party; or

(B) the parent or guardian has abused the minor; or

(c) subject to Subsection (5)(b), the parent or guardian has not assumed responsibility for the minor's care and upbringing.

(5) (a) If, for the reason described in Subsection (4)(a), a physician does not give the 24-hour notice described in Subsection (3), the physician shall give the required notice as early as possible before the abortion, unless it is necessary to perform the abortion immediately in order to avert the minor's death or impairment described in Subsection (4)(a)(i).

(b) If, for a reason described in Subsection (4)(b) or (c), a parent or guardian of a minor is not notified that the minor intends to have an abortion, the physician shall notify another parent or guardian of the minor, if the minor has another parent or guardian that is not exempt from notification under Subsection (4)(b) or (c).

(6) If, for a reason described in Subsection (4)(b)(ii)(A) or (B), a physician does not notify a parent or guardian of a minor that the minor intends to have an abortion, the physician shall report the incest or abuse to the Division of Child and Family Services within the Department of Human Services.

Section 34. Section **78-3a-103** is amended to read:

78-3a-103. Definitions.

(1) As used in this chapter:

~~[(a) "Abused child" includes a child who:]~~

1458 ~~[(i) has suffered or been threatened with nonaccidental physical or mental harm,~~
1459 ~~negligent treatment, or sexual exploitation; or]~~
1460 ~~[(ii) has been the victim of any sexual abuse.]~~
1461 (a) (i) "Abuse" means:
1462 (A) nonaccidental harm of a child;
1463 (B) threatened harm of a child;
1464 (C) sexual exploitation; or
1465 (D) sexual abuse.
1466 (ii) "Abuse" does not include:
1467 (A) reasonable discipline or management of a child, including withholding privileges;
1468 (B) conduct described in Section 76-2-401; or
1469 (C) the use of reasonable and necessary physical restraint or force on a child;
1470 (I) in self-defense;
1471 (II) in defense of others;
1472 (III) to protect the child; or
1473 (IV) to remove a weapon in the possession of a child for any of the reasons described
1474 in Subsections (1)(a)(ii)(C)(I) through (III).
1475 (b) "Abused child" means a child who has been subjected to abuse.
1476 ~~[(b)]~~ (c) "Adjudication" means a finding by the court, incorporated in a decree, that the
1477 facts alleged in the petition have been proved.
1478 ~~[(c)]~~ (d) "Adult" means a person 18 years of age or over, except that a person 18 years
1479 or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121
1480 shall be referred to as a minor.
1481 ~~[(d)]~~ (e) "Board" means the Board of Juvenile Court Judges.
1482 ~~[(e)]~~ (f) "Child" means a person under 18 years of age.
1483 ~~[(f)]~~ (g) "Child placement agency" means:
1484 (i) a private agency licensed to receive a child for placement or adoption under this
1485 code; or
1486 (ii) a private agency that receives a child for placement or adoption in another state,
1487 which agency is licensed or approved where such license or approval is required by law.
1488 ~~[(g)]~~ (h) "Clandestine laboratory operation" is as defined in Section 58-37d-3.

- 1489 ~~[(h)]~~ (i) "Commit" means, unless specified otherwise:
- 1490 (i) with respect to a child, to transfer legal custody; and
- 1491 (ii) with respect to a minor who is at least 18 years of age, to transfer custody.
- 1492 ~~[(i)]~~ (j) "Court" means the juvenile court.
- 1493 ~~[(j)]~~ (k) "Dependent child" includes a child who is homeless or without proper care
- 1494 through no fault of the child's parent, guardian, or custodian.
- 1495 ~~[(k)]~~ (l) "Deprivation of custody" means transfer of legal custody by the court from a
- 1496 parent or the parents or a previous legal custodian to another person, agency, or institution.
- 1497 ~~[(l)]~~ (m) "Detention" means home detention and secure detention as defined in Section
- 1498 62A-7-101 for the temporary care of a minor who requires secure custody in a physically
- 1499 restricting facility:
- 1500 (i) pending court disposition or transfer to another jurisdiction; or
- 1501 (ii) while under the continuing jurisdiction of the court.
- 1502 ~~[(m)]~~ (n) "Division" means the Division of Child and Family Services.
- 1503 ~~[(n)]~~ (o) "Formal referral" means a written report from a peace officer or other person
- 1504 informing the court that a minor is or appears to be within the court's jurisdiction and that a
- 1505 petition may be filed.
- 1506 ~~[(o)]~~ (p) "Group rehabilitation therapy" means psychological and social counseling of
- 1507 one or more persons in the group, depending upon the recommendation of the therapist.
- 1508 ~~[(p)]~~ (q) "Guardianship of the person" includes the authority to consent to:
- 1509 (i) marriage;
- 1510 (ii) enlistment in the armed forces;
- 1511 (iii) major medical, surgical, or psychiatric treatment; or
- 1512 (iv) legal custody, if legal custody is not vested in another person, agency, or
- 1513 institution.
- 1514 ~~[(q)]~~ (r) "Habitual truant" is as defined in Section 53A-11-101.
- 1515 (s) "Harm" means:
- 1516 (i) physical, emotional, or developmental injury or damage;
- 1517 (ii) sexual abuse; or
- 1518 (iii) sexual exploitation.
- 1519 (t) (i) "Incest" means engaging in sexual intercourse with a person whom the

1520 perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt,
 1521 nephew, niece, or first cousin.

1522 (ii) The relationships described in Subsection (1)(t)(i) include:

1523 (A) blood relationships of the whole or half blood, without regard to legitimacy;

1524 (B) relationships of parent and child by adoption; and

1525 (C) relationships of stepparent and stepchild while the marriage creating the
 1526 relationship of a stepparent and stepchild exists.

1527 ~~[(t)]~~ (u) "Legal custody" means a relationship embodying the following rights and
 1528 duties:

1529 (i) the right to physical custody of the minor;

1530 (ii) the right and duty to protect, train, and discipline the minor;

1531 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
 1532 medical care;

1533 (iv) the right to determine where and with whom the minor shall live; and

1534 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1535 ~~[(s)]~~ (v) "Minor" means:

1536 (i) a child; or

1537 (ii) a person who is:

1538 (A) at least 18 years of age and younger than 21 years of age; and

1539 (B) under the jurisdiction of the juvenile court.

1540 (w) "Molestation" means that a person, with the intent to arouse or gratify the sexual
 1541 desire of any person:

1542 (i) touches the anus or any part of the genitals of a child;

1543 (ii) takes indecent liberties with a child; or

1544 (iii) causes a child to take indecent liberties with the perpetrator or another.

1545 ~~[(t)]~~ (x) "Natural parent" means a minor's biological or adoptive parent, and includes
 1546 the minor's noncustodial parent.

1547 ~~[(u)]~~ ~~(i) "Neglected child" means a child:~~

1548 ~~[(A) whose parent, guardian, or custodian has abandoned the child, except as provided~~
 1549 ~~in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;]~~

1550 ~~[(B) whose parent, guardian, or custodian has subjected the child to mistreatment or~~

1551 abuse;]

1552 [~~(C) who lacks proper parental care by reason of the fault or habits of the parent,~~

1553 ~~guardian, or custodian;~~]

1554 [~~(D) whose parent, guardian, or custodian fails or refuses to provide proper or~~

1555 ~~necessary subsistence, education, or medical care, including surgery or psychiatric services~~

1556 ~~when required, or any other care necessary for health, safety, morals, or well-being;~~]

1557 [~~(E) who is at risk of being a neglected or abused child as defined in this chapter~~

1558 ~~because another child in the same home is a neglected or abused child as defined in this~~

1559 ~~chapter; or]~~

1560 [~~(F) whose parent permits the minor to reside, on a permanent or temporary basis, at~~

1561 ~~the location of a clandestine laboratory operation.;~~]

1562 [(ii) ~~The aspect of neglect related to education, described in Subsection (1)(u)(i)(D),~~

1563 ~~means that, after receiving notice that a child has been frequently absent from school without~~

1564 ~~good cause, or that the child has failed to cooperate with school authorities in a reasonable~~

1565 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the child receives~~

1566 ~~an appropriate education.;~~]

1567 [(iii) ~~A parent or guardian legitimately practicing religious beliefs and who, for that~~

1568 ~~reason, does not provide specified medical treatment for a child, is not guilty of neglect.;~~]

1569 [(iv) ~~Notwithstanding Subsection (1)(u)(i), a health care decision made for a child by~~

1570 ~~the child's parent or guardian does not constitute neglect unless the state or other party to the~~

1571 ~~proceeding shows, by clear and convincing evidence, that the health care decision is not~~

1572 ~~reasonable and informed.;~~]

1573 [(v) ~~Nothing in Subsection (1)(u)(iv) may prohibit a parent or guardian from exercising~~

1574 ~~the right to obtain a second health care opinion.;~~]

1575 (y) (i) "Neglect" means:

1576 (A) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe

1577 Relinquishment of a Newborn Child;

1578 (B) lack of proper parental care of a child by reason of the fault or habits of the parent,

1579 guardian, or custodian;

1580 (C) failure or refusal of a parent, guardian, or custodian to provide proper or necessary

1581 subsistence, education, or medical care, or any other care necessary for the child's health,

1582 safety, morals, or well-being; or

1583 (D) a child at risk of being neglected or abused because another child in the same home
 1584 is neglected or abused.

1585 (ii) The aspect of neglect relating to education, described in Subsection (1)(y)(i)(C),
 1586 means that, after receiving a notice of compulsory education violation under Section
 1587 53A-11-101.5, or notice that a parent or guardian has failed to cooperate with school
 1588 authorities in a reasonable manner as required under Subsection 53A-11-101.7(5)(a), the parent
 1589 or guardian fails to make a good faith effort to ensure that the child receives an appropriate
 1590 education.

1591 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that
 1592 reason, does not provide specified medical treatment for a child, is not guilty of neglect.

1593 (iv) (A) Notwithstanding Subsection (1)(y)(i), a health care decision made for a child
 1594 by the child's parent or guardian does not constitute neglect unless the state or other party to the
 1595 proceeding shows, by clear and convincing evidence, that the health care decision is not
 1596 reasonable and informed.

1597 (B) Nothing in Subsection (1)(y)(iv)(A) may prohibit a parent or guardian from
 1598 exercising the right to obtain a second health care opinion.

1599 (z) "Neglected child" means a child who has been subjected to neglect.

1600 ~~[(v)]~~ (aa) "Nonjudicial adjustment" means closure of the case by the assigned probation
 1601 officer without judicial determination upon the consent in writing of:

1602 (i) the assigned probation officer; and

1603 (ii) (A) the minor; or

1604 (B) the minor and the minor's parent, legal guardian, or custodian.

1605 (bb) "Physical abuse" means abuse that results in physical injury or damage to a child.

1606 ~~[(w)]~~ (cc) "Probation" means a legal status created by court order following an
 1607 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
 1608 minor is permitted to remain in the minor's home under prescribed conditions and under
 1609 supervision by the probation department or other agency designated by the court, subject to
 1610 return to the court for violation of any of the conditions prescribed.

1611 ~~[(x)]~~ (dd) "Protective supervision" means a legal status created by court order
 1612 following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor

1613 is permitted to remain in the minor's home, and supervision and assistance to correct the abuse,
1614 neglect, or dependency is provided by the probation department or other agency designated by
1615 the court.

1616 ~~[(yy)]~~ (ee) (i) "Residual parental rights and duties" means those rights and duties
1617 remaining with the parent after legal custody or guardianship, or both, have been vested in
1618 another person or agency, including:

1619 (A) the responsibility for support;

1620 (B) the right to consent to adoption;

1621 (C) the right to determine the child's religious affiliation; and

1622 (D) the right to reasonable parent-time unless restricted by the court.

1623 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
1624 the right to consent to:

1625 (A) marriage;

1626 (B) enlistment; and

1627 (C) major medical, surgical, or psychiatric treatment.

1628 ~~[(zz)]~~ (ff) "Secure facility" means any facility operated by or under contract with the
1629 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
1630 youth offenders committed to the division for custody and rehabilitation.

1631 (gg) "Severe abuse" means abuse that causes or threatens to cause serious harm to a
1632 child.

1633 (hh) "Severe neglect" means neglect that causes or threatens to cause serious harm to a
1634 child.

1635 (ii) "Sexual abuse" means:

1636 (i) an act or attempted act of sexual intercourse, sodomy, incest, or molestation directed
1637 towards a child; or

1638 (ii) engaging in any conduct with a child that would constitute an offense under any of
1639 the following, regardless of whether the person who engages in the conduct is actually charged
1640 with, or convicted of, the offense:

1641 (A) Title 76, Chapter 5, Part 4, Sexual Offenses;

1642 (B) child bigamy, Section 76-7-101.5;

1643 (C) incest, Section 76-7-102;

- 1644 (D) lewdness or sexual battery, Section 76-9-702;
 1645 (E) lewdness involving a child, Section 76-9-702.5; or
 1646 (F) voyeurism, Section 76-9-702.7.
 1647 (jj) "Sexual exploitation" means knowingly:
 1648 (i) employing, using, persuading, inducing, enticing, or coercing any child to:
 1649 (A) pose in the nude for the purpose of sexual arousal of any person; or
 1650 (B) engage in any sexual or simulated sexual conduct for the purpose of
 1651 photographing, filming, recording, or displaying in any way the sexual or simulated sexual
 1652 conduct;
 1653 (ii) displaying, distributing, possessing for the purpose of distribution, or selling
 1654 material depicting a child:
 1655 (A) in the nude, for the purpose of sexual arousal of any person; or
 1656 (B) engaging in sexual or simulated sexual conduct; or
 1657 (iii) engaging in any conduct that would constitute an offense under Title 76, Chapter
 1658 5a, Sexual Exploitation of Children, regardless of whether the person who engages in the
 1659 conduct is actually charged with, or convicted of, the offense.
 1660 ~~[(aa)]~~ (kk) "Shelter" means the temporary care of a child in a physically unrestricted
 1661 facility pending court disposition or transfer to another jurisdiction.
 1662 ~~[(bb)]~~ (ll) "State supervision" means a disposition that provides a more intensive level
 1663 of intervention than standard probation but is less intensive or restrictive than a community
 1664 placement with the Division of Juvenile Justice Services.
 1665 (mm) "Substance abuse" means the misuse or excessive use of alcohol or other drugs
 1666 or substances.
 1667 ~~[(cc)]~~ (nn) "Substantiated" is as defined in Section 62A-4a-101.
 1668 ~~[(dd)]~~ (oo) "Supported" is as defined in Section 62A-4a-101.
 1669 ~~[(ee)]~~ (pp) "Termination of parental rights" means the permanent elimination of all
 1670 parental rights and duties, including residual parental rights and duties, by court order.
 1671 ~~[(ff)]~~ (qq) "Therapist" means:
 1672 (i) a person employed by a state division or agency for the purpose of conducting
 1673 psychological treatment and counseling of a minor in its custody; or
 1674 (ii) any other person licensed or approved by the state for the purpose of conducting

1675 psychological treatment and counseling.

1676 ~~[(gg)]~~ (rr) "Unsubstantiated" is as defined in Section 62A-4a-101.

1677 ~~[(hh)]~~ (ss) "Without merit" is as defined in Section 62A-4a-101.

1678 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
1679 Division of Child and Family Services:

1680 (a) "Custody" means the custody of a minor in the Division of Child and Family
1681 Services as of the date of disposition.

1682 (b) "Protective custody" means the shelter of a child by the Division of Child and
1683 Family Services from the time the child is removed from home until the earlier of:

1684 (i) the shelter hearing; or

1685 (ii) the child's return home.

1686 (c) "Temporary custody" means the custody of a child in the Division of Child and
1687 Family Services from the date of the shelter hearing until disposition.

1688 Section 35. Section **78-3a-301** is amended to read:

1689 **78-3a-301. Court-ordered protective custody of a child following petition filing --**
1690 **Grounds.**

1691 (1) After a petition has been filed under Section 78-3a-305, if the child who is the
1692 subject of the petition is not in the protective custody of the division, a court may order that the
1693 child be removed from the child's home or otherwise taken into protective custody if the court
1694 finds, by a preponderance of the evidence, that any one or more of the following circumstances
1695 exist:

1696 (a) (i) there is an imminent danger to the physical health or safety of the child; and

1697 (ii) the child's physical health or safety may not be protected without removing the
1698 child from the custody of the child's parent or guardian;

1699 (b) (i) a parent or guardian engages in or threatens the child with unreasonable conduct
1700 that causes the child to suffer emotional damage; and

1701 (ii) there are no reasonable means available by which the child's emotional health may
1702 be protected without removing the child from the custody of the child's parent or guardian;

1703 (c) the child or another child residing in the same household has been, or is considered
1704 to be at substantial risk of being, physically ~~[or]~~ abused, sexually abused, or ~~[is considered to~~
1705 ~~be at substantial risk of being physically or]~~ sexually [abused] exploited, by a parent or

1706 guardian, a member of the parent's or guardian's household, or other person known to the
1707 parent or guardian;

1708 (d) the parent or guardian is unwilling to have physical custody of the child;

1709 (e) the child is abandoned or left without any provision for the child's support;

1710 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
1711 or cannot arrange for safe and appropriate care for the child;

1712 (g) (i) a relative or other adult custodian with whom the child is left by the parent or
1713 guardian is unwilling or unable to provide care or support for the child;

1714 (ii) the whereabouts of the parent or guardian are unknown; and

1715 (iii) reasonable efforts to locate the parent or guardian are unsuccessful;

1716 (h) the child is in immediate need of medical care;

1717 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
1718 environment that poses a threat to the child's health or safety; or

1719 (ii) a parent's or guardian's action in leaving a child unattended would reasonably pose
1720 a threat to the child's health or safety;

1721 (j) the child or another child residing in the same household has been neglected;

1722 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

1723 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or
1724 guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act;
1725 and

1726 (ii) any clandestine laboratory operation was located in the residence or on the property
1727 where the child resided; or

1728 (m) the child's welfare is otherwise endangered.

1729 (2) (a) For purposes of Subsection (1)(a), if a child has previously been adjudicated as
1730 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
1731 occurs involving the same substantiated abuser or under similar circumstance as the previous
1732 abuse, that fact constitutes prima facie evidence that the child cannot safely remain in the
1733 custody of the child's parent.

1734 (b) For purposes of Subsection (1)(c):

1735 (i) another child residing in the same household may not be removed from the home
1736 unless that child is considered to be at substantial risk of being physically ~~or~~ abused, sexually

abused, or sexually exploited as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical ~~[or]~~ abuse, sexual abuse, or sexual exploitation by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the child, after having received the notice, by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of being physically ~~[or]~~ abused, sexually abused, or sexually exploited.

(3) In the absence of one of the factors described in Subsection (1), a court may not remove a child from the parent's or guardian's custody on the basis of:

(a) educational neglect;

(b) mental illness or poverty of the parent or guardian; or

(c) disability of the parent or guardian, as defined in Section 57-21-2.

(4) A child removed from the custody of the child's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a child from the child's home without a warrant or court order under Section 62A-4a-202.1.

(6) (a) Except as provided in Subsection (6)(b), a court or the Division of Child and Family Services may not remove a child from the custody of the child's parent or guardian on the sole or primary basis that the parent or guardian refuses to consent to:

(i) the administration of a psychotropic medication to a child;

(ii) a psychiatric, psychological, or behavioral treatment for a child; or

(iii) a psychiatric or behavioral health evaluation of a child.

(b) Notwithstanding Subsection (6)(a), a court or the Division of Child and Family Services may remove a child under conditions that would otherwise be prohibited under Subsection (6)(a) if failure to take an action described under Subsection (6)(a) would present a serious, imminent risk to the child's physical safety or the physical safety of others.

Section 36. Section **78-3a-306** is amended to read:

78-3a-306. Shelter hearing.

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays

1768 after any one or all of the following occur:

- 1769 (a) removal of the child from the child's home by the division;
- 1770 (b) placement of the child in the protective custody of the division;
- 1771 (c) emergency placement under Subsection 62A-4a-202.1(4);
- 1772 (d) as an alternative to removal of the child, a parent enters a domestic violence shelter
- 1773 at the request of the division; or
- 1774 (e) a "Motion for Expedited Placement in Temporary Custody" is filed under
- 1775 Subsection 78-3a-106(4).

1776 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)

1777 through (e), the division shall issue a notice that contains all of the following:

- 1778 (a) the name and address of the person to whom the notice is directed;
- 1779 (b) the date, time, and place of the shelter hearing;
- 1780 (c) the name of the child on whose behalf a petition is being brought;
- 1781 (d) a concise statement regarding:
 - 1782 (i) the reasons for removal or other action of the division under Subsection (1); and
 - 1783 (ii) the allegations and code sections under which the proceeding has been instituted;
- 1784 (e) a statement that the parent or guardian to whom notice is given, and the child, are
- 1785 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
- 1786 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
- 1787 provided; and
- 1788 (f) a statement that the parent or guardian is liable for the cost of support of the child in
- 1789 the protective custody, temporary custody, and custody of the division, and the cost for legal
- 1790 counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial
- 1791 ability of the parent or guardian.

1792 (3) The notice described in Subsection (2) shall be personally served as soon as

1793 possible, but no later than one business day after removal of the child from the child's home, or

1794 the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection

1795 78-3a-106(4), on:

- 1796 (a) the appropriate guardian ad litem; and
- 1797 (b) both parents and any guardian of the child, unless the parents or guardians cannot
- 1798 be located.

- 1799 (4) The following persons shall be present at the shelter hearing:
1800 (a) the child, unless it would be detrimental for the child;
1801 (b) the child's parents or guardian, unless the parents or guardian cannot be located, or
1802 fail to appear in response to the notice;
1803 (c) counsel for the parents, if one is requested;
1804 (d) the child's guardian ad litem;
1805 (e) the caseworker from the division who is assigned to the case; and
1806 (f) the attorney from the attorney general's office who is representing the division.
- 1807 (5) (a) At the shelter hearing, the court shall:
1808 (i) provide an opportunity to provide relevant testimony to:
1809 (A) the child's parent or guardian, if present; and
1810 (B) any other person having relevant knowledge; and
1811 (ii) subject to Section 78-3a-305.5, provide an opportunity for the child to testify.
- 1812 (b) The court:
1813 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
1814 Procedure;
1815 (ii) shall hear relevant evidence presented by the child, the child's parent or guardian,
1816 the requesting party, or their counsel; and
1817 (iii) may in its discretion limit testimony and evidence to only that which goes to the
1818 issues of removal and the child's need for continued protection.
- 1819 (6) If the child is in the protective custody of the division, the division shall report to
1820 the court:
1821 (a) the reason why the child was removed from the parent's or guardian's custody;
1822 (b) any services provided to the child and the child's family in an effort to prevent
1823 removal;
1824 (c) the need, if any, for continued shelter;
1825 (d) the available services that could facilitate the return of the child to the custody of
1826 the child's parent or guardian; and
1827 (e) subject to Subsection 78-3a-307(8)(c), whether any relatives of the child or friends
1828 of the child's parents may be able and willing to take temporary custody.
- 1829 (7) The court shall consider all relevant evidence provided by persons or entities

1830 authorized to present relevant evidence pursuant to this section.

1831 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
1832 cause shown, the court may grant no more than one continuance, not to exceed five judicial
1833 days.

1834 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
1835 a continuance under Subsection (8)(a).

1836 (9) (a) If the child is in the protective custody of the division, the court shall order that
1837 the child be released from the protective custody of the division unless it finds, by a
1838 preponderance of the evidence, that any one of the following exist:

1839 (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or
1840 safety of the child and the child's physical health or safety may not be protected without
1841 removing the child from the custody of the child's parent;

1842 (ii) (A) the child is suffering emotional damage; and

1843 (B) there are no reasonable means available by which the child's emotional health may
1844 be protected without removing the child from the custody of the child's parent;

1845 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is
1846 not removed from the custody of the child's parents;

1847 (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same
1848 household has been [~~physically or sexually abused~~], or is considered to be at substantial risk of
1849 being, physically [~~or~~] abused, sexually abused, or sexually exploited by a:

1850 (A) parent;

1851 (B) member of the parent's household; or

1852 (C) person known to the parent;

1853 (v) the parent is unwilling to have physical custody of the child;

1854 (vi) the child is without any provision for the child's support;

1855 (vii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe
1856 and appropriate care for the child;

1857 (viii) (A) a relative or other adult custodian with whom the child is left by the parent is
1858 unwilling or unable to provide care or support for the child;

1859 (B) the whereabouts of the parent are unknown; and

1860 (C) reasonable efforts to locate the parent are unsuccessful;

(ix) the child is in urgent need of medical care;

(x) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety;

(xi) the child or a minor residing in the same household has been neglected;

(xii) the parent, or an adult residing in the same household as the parent, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided; or

(xiii) the child's welfare is substantially endangered.

(b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically ~~or~~ abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically ~~or~~ abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse [~~or~~], sexual exploitation, abandonment, [~~or serious physical~~] severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as described in Subsection 78-3a-103(1)(~~u~~)(y)(ii).

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if the child were returned home, the court shall order continued removal regardless of:

(a) any error in the initial removal of the child;

(b) the failure of a party to comply with notice provisions; or

(c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 37. Section **78-3a-307.1** is amended to read:

78-3a-307.1. Criminal background checks necessary prior to out-of-home placement.

(1) Upon ordering removal of a child from the custody of the child's parent and placing that child in the custody of the Division of Child and Family Services, prior to the division's placement of that child in out-of-home care, the court shall require the completion of a background check by the Utah Bureau of Criminal Identification regarding the proposed placement.

(2) (a) The Division of Child and Family Services and the Office of the Guardian ad Litem Director may request, or the court upon its own motion may order, the Department of Public Safety to conduct a complete Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC).

(b) Upon request by the Division of Child and Family Services or the Office of the

Guardian ad Litem Director, or upon the court's order, persons subject to the requirements of Subsection (1) shall submit fingerprints and shall be subject to an FBI fingerprint background check. The child may be temporarily placed, pending the outcome of that background check.

(c) The cost of those investigations shall be borne by whoever is to receive placement of the child, except that the Division of Child and Family Services may pay all or part of the cost of those investigations if the person with whom the child is to be placed is unable to pay.

(3) Notwithstanding any other provision of this section, except as otherwise permitted by federal law or rule, a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:

(a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent or prospective adoptive parent and each adult living in the home of the prospective foster parent or prospective adoptive parent;

(b) the Department of Human Services conducts a check of the [child] abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of [child] abuse or neglect;

(c) the Department of Human Services conducts a check of the [child] abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (3)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of [child] abuse or neglect; and

(d) each person required to undergo a background check described in this Subsection (3) passes the background check, pursuant to the provisions of Section 62A-2-120.

Section 38. Section **78-3a-311** is amended to read:

78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may:

(a) make any of the dispositions described in Section 78-3a-118;

1954 (b) place the minor in the custody or guardianship of any:
1955 (i) individual; or
1956 (ii) public or private entity or agency; or
1957 (c) order:
1958 (i) protective supervision;
1959 (ii) family preservation;
1960 (iii) subject to Subsection 78-3a-118(2)(n)(iii), medical or mental health treatment; or
1961 (iv) other services.

1962 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
1963 and that the minor remain in the custody of the division, the court shall first:
1964 (A) establish a primary permanency goal for the minor; and
1965 (B) determine whether, in view of the primary permanency goal, reunification services
1966 are appropriate for the minor and the minor's family, pursuant to Subsection (3).
1967 (ii) Subject to Subsection (2)(b), if the court determines that reunification services are
1968 appropriate for the minor and the minor's family, the court shall provide for reasonable
1969 parent-time with the parent or parents from whose custody the minor was removed, unless
1970 parent-time is not in the best interest of the minor.

1971 (iii) (A) In cases where obvious sexual abuse, sexual exploitation, abandonment, [~~or~~
1972 ~~serious-physical~~] severe abuse, or severe neglect are involved, neither the division nor the court
1973 has any duty to make "reasonable efforts" or to, in any other way, attempt to provide
1974 reunification services, or to attempt to rehabilitate the offending parent or parents.

1975 (B) In all cases, the minor's health, safety, and welfare shall be the court's paramount
1976 concern in determining whether reasonable efforts to reunify should be made.

1977 (b) (i) For purposes of Subsection (2)(a)(ii), parent-time is in the best interests of a
1978 minor unless the court makes a finding that it is necessary to deny parent-time in order to:
1979 (A) protect the physical safety of the minor;
1980 (B) protect the life of the minor; or
1981 (C) prevent the minor from being traumatized by contact with the parent due to the
1982 minor's fear of the parent in light of the nature of the alleged abuse or neglect.

1983 (ii) Notwithstanding Subsection (2)(a)(ii), a court may not deny parent-time based
1984 solely on a parent's failure to:

1985 (A) prove that the parent has not used legal or illegal substances; or
1986 (B) comply with an aspect of the child and family plan that is ordered by the court.
1987 (c) (i) In addition to the primary permanency goal, the court shall establish a concurrent
1988 permanency goal that shall include:
1989 (A) a representative list of the conditions under which the primary permanency goal
1990 will be abandoned in favor of the concurrent permanency goal; and
1991 (B) an explanation of the effect of abandoning or modifying the primary permanency
1992 goal.
1993 (ii) A permanency hearing shall be conducted in accordance with Subsection
1994 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
1995 minor's primary permanency goal.
1996 (iii) (A) The court may amend a minor's primary permanency goal before the
1997 establishment of a final permanency plan under Section 78-3a-312.
1998 (B) The court is not limited to the terms of the concurrent permanency goal in the event
1999 that the primary permanency goal is abandoned.
2000 (C) If, at any time, the court determines that reunification is no longer a minor's
2001 primary permanency goal, the court shall conduct a permanency hearing in accordance with
2002 Section 78-3a-312 on or before the earlier of:
2003 (I) 30 days from the day on which the court makes the determination described in this
2004 Subsection (2)(c)(iii)(C); or
2005 (II) 12 months from the day on which the minor was first removed from the minor's
2006 home.
2007 (d) (i) (A) If the court determines that reunification services are appropriate, it shall
2008 order that the division make reasonable efforts to provide services to the minor and the minor's
2009 parent for the purpose of facilitating reunification of the family, for a specified period of time.
2010 (B) In providing the services described in Subsection (2)(d)(i)(A), the minor's health,
2011 safety, and welfare shall be the division's paramount concern, and the court shall so order.
2012 (ii) The court shall:
2013 (A) determine whether the services offered or provided by the division under the child
2014 and family plan constitute "reasonable efforts" on the part of the division;
2015 (B) determine and define the responsibilities of the parent under the child and family

2016 plan in accordance with Subsection 62A-4a-205(6)(e); and
2017 (C) identify on the record the responsibilities described in Subsection (2)(d)(ii)(B), for
2018 the purpose of assisting in any future determination regarding the provision of reasonable
2019 efforts, in accordance with state and federal law.

2020 (iii) (A) The time period for reunification services may not exceed 12 months from the
2021 date that the minor was initially removed from the minor's home.

2022 (B) Nothing in this section may be construed to entitle any parent to an entire 12
2023 months of reunification services.

2024 (iv) If reunification services are ordered, the court may terminate those services at any
2025 time.

2026 (v) If, at any time, continuation of reasonable efforts to reunify a minor is determined
2027 to be inconsistent with the final permanency plan for the minor established pursuant to Section
2028 78-3a-312, then measures shall be taken, in a timely manner, to:

2029 (A) place the minor in accordance with the permanency plan; and
2030 (B) complete whatever steps are necessary to finalize the permanent placement of the
2031 minor.

2032 (e) Any physical custody of the minor by the parent or a relative during the period
2033 described in Subsection (2)(d) does not interrupt the running of the period.

2034 (f) (i) If reunification services are ordered, a permanency hearing shall be conducted by
2035 the court in accordance with Section 78-3a-312 at the expiration of the time period for
2036 reunification services.

2037 (ii) The permanency hearing shall be held no later than 12 months after the original
2038 removal of the minor.

2039 (iii) If reunification services are not ordered, a permanency hearing shall be conducted
2040 within 30 days, in accordance with Section 78-3a-312.

2041 (g) With regard to a minor who is 36 months of age or younger at the time the minor is
2042 initially removed from the home, the court shall:

2043 (i) hold a permanency hearing eight months after the date of the initial removal,
2044 pursuant to Section 78-3a-312; and

2045 (ii) order the discontinuance of those services after eight months from the initial
2046 removal of the minor from the home if the parent or parents have not made substantial efforts

2047 to comply with the child and family plan.

2048 (h) With regard to a minor in the custody of the division whose parent or parents are
2049 ordered to receive reunification services but who have abandoned that minor for a period of six
2050 months from the date that reunification services were ordered:

2051 (i) the court shall terminate reunification services; and

2052 (ii) the division shall petition the court for termination of parental rights.

2053 (3) (a) Because of the state's interest in and responsibility to protect and provide
2054 permanency for minors who are abused, neglected, or dependent, the Legislature finds that a
2055 parent's interest in receiving reunification services is limited.

2056 (b) The court may determine that:

2057 (i) efforts to reunify a minor with the minor's family are not reasonable or appropriate,
2058 based on the individual circumstances; and

2059 (ii) reunification services should not be provided.

2060 (c) In determining "reasonable efforts" to be made with respect to a minor, and in
2061 making "reasonable efforts," the minor's health, safety, and welfare shall be the paramount
2062 concern.

2063 (d) (i) There is a presumption that reunification services should not be provided to a
2064 parent if the court finds, by clear and convincing evidence, that any of the following
2065 circumstances exist:

2066 (A) the whereabouts of the parents are unknown, based upon a verified affidavit
2067 indicating that a reasonably diligent search has failed to locate the parent;

2068 (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of such
2069 magnitude that it renders the parent incapable of utilizing reunification services;

2070 (C) the minor was previously adjudicated as an abused child due to physical [or] abuse,
2071 sexual abuse, or sexual exploitation, and following the adjudication the minor:

2072 (I) was removed from the custody of the minor's parent;

2073 (II) was subsequently returned to the custody of the parent; and

2074 (III) is being removed due to additional physical [or] abuse, sexual abuse, or sexual
2075 exploitation;

2076 (D) the parent:

2077 (I) caused the death of another minor through abuse or neglect; or

2078 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:
2079 (Aa) murder or manslaughter of a child; or
2080 (Bb) child abuse homicide;
2081 (E) the minor suffered severe abuse by the parent or by any person known by the
2082 parent, if the parent knew or reasonably should have known that the person was abusing the
2083 minor;
2084 (F) the minor is adjudicated an abused child as a result of severe abuse by the parent,
2085 and the court finds that it would not benefit the minor to pursue reunification services with the
2086 offending parent;
2087 (G) the parent's rights are terminated with regard to any other minor;
2088 (H) the minor is removed from the minor's home on at least two previous occasions
2089 and reunification services were offered or provided to the family at those times;
2090 (I) the parent has abandoned the minor for a period of six months or longer;
2091 (J) the parent permitted the child to reside, on a permanent or temporary basis, at a
2092 location where the parent knew or should have known that a clandestine laboratory operation
2093 was located; or
2094 (K) any other circumstance that the court determines should preclude reunification
2095 efforts or services.
2096 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
2097 from at least two medical or mental health professionals, who are not associates, establishing
2098 that, even with the provision of services, the parent is not likely to be capable of adequately
2099 caring for the minor within 12 months from the day on which the court finding is made.
2100 (4) In determining whether reunification services are appropriate, the court shall take
2101 into consideration:
2102 (a) failure of the parent to respond to previous services or comply with a previous child
2103 and family plan;
2104 (b) the fact that the minor was abused while the parent was under the influence of
2105 drugs or alcohol;
2106 (c) any history of violent behavior directed at the child or an immediate family
2107 member;
2108 (d) whether a parent continues to live with an individual who abused the minor;

2109 (e) any patterns of the parent's behavior that have exposed the minor to repeated abuse;

2110 (f) testimony by a competent professional that the parent's behavior is unlikely to be
2111 successful; and

2112 (g) whether the parent has expressed an interest in reunification with the minor.

2113 (5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the
2114 whereabouts of a parent become known within six months of the out-of-home placement of the
2115 minor, the court may order the division to provide reunification services.

2116 (b) The time limits described in Subsection (2) are not tolled by the parent's absence.

2117 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
2118 services unless it determines that those services would be detrimental to the minor.

2119 (b) In making the determination described in Subsection (6)(a), the court shall
2120 consider:

2121 (i) the age of the minor;

2122 (ii) the degree of parent-child bonding;

2123 (iii) the length of the sentence;

2124 (iv) the nature of the treatment;

2125 (v) the nature of the crime or illness;

2126 (vi) the degree of detriment to the minor if services are not offered;

2127 (vii) for a minor ten years of age or older, the minor's attitude toward the
2128 implementation of family reunification services; and

2129 (viii) any other appropriate factors.

2130 (c) Reunification services for an incarcerated parent are subject to the 12-month
2131 limitation imposed in Subsection (2).

2132 (d) Reunification services for an institutionalized parent are subject to the 12-month
2133 limitation imposed in Subsection (2), unless the court determines that continued reunification
2134 services would be in the minor's best interest.

2135 (7) If, pursuant to Subsections (3)(d)(i)(B) through (K), the court does not order
2136 reunification services, a permanency hearing shall be conducted within 30 days, in accordance
2137 with Section 78-3a-312.

2138 Section 39. Section **78-3a-314** is amended to read:

2139 **78-3a-314. All proceedings -- Persons entitled to be present.**

(1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, foster parents, and any relative providing care for the child, are:

(a) entitled to notice of, and to be present at, each hearing and proceeding held under this part, including administrative and citizen reviews; and

(b) have a right to be heard at each hearing and proceeding described in Subsection (1)(a).

(2) A child shall be represented at each hearing by the guardian ad litem appointed to the child's case by the court. The child has a right to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.

(3) (a) The parent or guardian of a child who is the subject of a petition under this part has the right to be represented by counsel, and to present evidence, at each hearing.

(b) When it appears to the court that a parent or guardian of the child desires counsel but is financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioner is recommending that the child be placed in out-of-home care, the court shall appoint counsel.

(4) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78-3a-912. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 4, Termination of Parental Rights Act.

(5) Notwithstanding any other provision of law, counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter. If the natural parent of a child is ~~representing himself~~ not represented by counsel, the natural parent shall have access to those records. The above disclosures are not required in the following circumstances:

(a) The division or other state or local public agency did not originally create the record being requested. In those circumstances, the person making the request under this section shall be informed of the following:

(i) the existence of all records in the possession of the division or any other state or local public agency;

(ii) the name and address of the person or agency that originally created the record; and

(iii) that the person must seek access to the record from the person or agency that originally created the record.

(b) Disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of ~~[child]~~ abuse or neglect, or any person who provided substitute care for the child.

(c) Disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation.

(d) Disclosure of the record would jeopardize the life or physical safety of a person who has been a victim of domestic violence.

(6) (a) The appropriate foster care citizen review board shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to an abuse, neglect, or dependency proceeding under this chapter.

(b) Representatives of the appropriate foster care citizen review board are entitled to be present at each hearing held under this part, but notice is not required to be provided.

Section 40. Section **78-3a-318** is amended to read:

78-3a-318. Treatment for offender and victim -- Costs.

(1) Upon adjudication in the juvenile court of a person or persons charged with child abuse ~~[or]~~, child sexual abuse, or sexual exploitation of a child the court may order treatment for the adjudicated offender and the victim or the child victim.

(2) The adjudicated offender shall be required by the court to pay, to the extent that he is able, the costs of that treatment together with the administrative costs incurred by the division in monitoring completion of the ordered therapy or treatment.

(3) If the adjudicated offender is unable to pay the full cost of treatment, the court may order the Division of Child and Family Services to pay those costs, to the extent that funding is provided by the Legislature for that purpose, and the offender shall be required by the court to perform public service work as compensation for the cost of treatment.

Section 41. Section **78-3a-403** is amended to read:

2202 **78-3a-403. Definitions.**

2203 As used in this chapter:

2204 (1) "Division" means the Division of Child and Family Services within the Department
2205 of Human Services.2206 (2) "Failure of parental adjustment" means that a parent or parents are unable or
2207 unwilling within a reasonable time to substantially correct the circumstances, conduct, or
2208 conditions that led to placement of their child outside of their home, notwithstanding
2209 reasonable and appropriate efforts made by the Division of Child and Family Services to return
2210 the child to that home.2211 (3) "Plan" means a written agreement between the parents of a child, who has been
2212 removed from [~~his~~] the child's home by the juvenile court, and the Division of Child and
2213 Family Services or written conditions and obligations imposed upon the parents directly by the
2214 juvenile court, that have a primary objective of reuniting the family or, if the parents [~~neglect~~]
2215 fail or refuse to comply with the terms and conditions of the case plan, freeing the child for
2216 adoption.2217 Section 42. Section **78-3a-407** is amended to read:2218 **78-3a-407. Grounds for termination of parental rights -- Findings regarding**
2219 **reasonable efforts.**2220 (1) The court may terminate all parental rights with respect to a parent if the court finds
2221 any one of the following:

2222 (a) that the parent has abandoned the child;

2223 (b) that the parent has neglected or abused the child;

2224 (c) that the parent is unfit or incompetent;

2225 (d) (i) that the child is being cared for in an out-of-home placement under the
2226 supervision of the court or the division;2227 (ii) that the parent has substantially neglected, wilfully refused, or has been unable or
2228 unwilling to remedy the circumstances that cause the child to be in an out-of-home placement;
2229 and2230 (iii) that there is a substantial likelihood that the parent will not be capable of
2231 exercising proper and effective parental care in the near future;

2232 (e) failure of parental adjustment, as defined in this chapter;

2233 (f) that only token efforts have been made by the parent:
2234 (i) to support or communicate with the child;
2235 (ii) to prevent neglect of the child;
2236 (iii) to eliminate the risk of serious [~~physical, mental, or emotional abuse of~~] harm to
2237 the child; or
2238 (iv) to avoid being an unfit parent;
2239 (g) (i) that the parent has voluntarily relinquished the parent's parental rights to the
2240 child; and
2241 (ii) that termination is in the child's best interest;
2242 (h) that, after a period of trial during which the child was returned to live in the child's
2243 own home, the parent substantially and continuously or repeatedly refused or failed to give the
2244 child proper parental care and protection; or
2245 (i) the terms and conditions of safe relinquishment of a newborn child have been
2246 complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn
2247 Child.
2248 (2) The court may not terminate the parental rights of a parent because the parent has
2249 failed to complete the requirements of a child and family plan.
2250 (3) (a) Except as provided in Subsection (3)(b), in any case in which the court has
2251 directed the division to provide reunification services to a parent, the court must find that the
2252 division made reasonable efforts to provide those services before the court may terminate the
2253 parent's rights under Subsection (1)(b), (c), (d), (e), (f), or (h).
2254 (b) Notwithstanding Subsection (3)(a), the court is not required to make the finding
2255 under Subsection (3)(a) before terminating a parent's rights:
2256 (i) under Subsection (1)(b), if the court finds that the abuse or neglect occurred
2257 subsequent to adjudication; or
2258 (ii) if reasonable efforts to provide the services described in Subsection (3)(a) are not
2259 required under federal law.
2260 Section 43. Section **78-3a-408** is amended to read:
2261 **78-3a-408. Evidence of grounds for termination.**
2262 (1) In determining whether a parent or parents have abandoned a child, it is prima facie
2263 evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

(c) failed to have shown the normal interest of a natural parent, without just cause; or

(d) have abandoned an infant, as described in Subsection 78-3a-313.5(1).

(2) In determining whether a parent or parents are unfit or have neglected a child the court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

(a) emotional illness, mental illness, or mental deficiency of the parent that renders the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances, or dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for the child's physical, mental, and emotional health and development by a parent or parents who are capable of providing that care;

(e) with regard to a child who is in the custody of the division, if the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) A parent who, legitimately practicing the parent's religious beliefs, does not provide specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

(4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or unfit because of a health care decision made for a child by the child's parent unless the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.

(b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to

2295 obtain a second health care opinion.

2296 (5) If a child has been placed in the custody of the division and the parent or parents
2297 fail to comply substantially with the terms and conditions of a plan within six months after the
2298 date on which the child was placed or the plan was commenced, whichever occurs later, that
2299 failure to comply is evidence of failure of parental adjustment.

2300 (6) The following circumstances constitute prima facie evidence of unfitness:

2301 (a) sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any
2302 child, due to known or substantiated abuse or neglect by the parent or parents;

2303 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to
2304 indicate the unfitness of the parent to provide adequate care to the extent necessary for the
2305 child's physical, mental, or emotional health and development;

2306 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement
2307 of the child; or

2308 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
2309 commit murder or manslaughter of a child or child abuse homicide.

2310 Section 44. Section **78-3a-801** is amended to read:

2311 **78-3a-801. Jurisdiction over adults for offenses against minors -- Proof of**
2312 **delinquency not required for conviction.**

2313 (1) The court shall have jurisdiction, concurrent with the district court or justice court
2314 otherwise having subject matter jurisdiction, to try adults for the following offenses committed
2315 against minors:

2316 (a) unlawful sale or supply of alcohol beverage or product to minors in violation of
2317 Section 32A-12-203;

2318 (b) failure to report [child] abuse or neglect, as required by Title 62A, Chapter 4a, Part
2319 4, Child Abuse or Neglect Reporting Requirements;

2320 (c) harboring a minor in violation of Section 62A-4a-501;

2321 (d) misdemeanor custodial interference in violation of Section 76-5-303;

2322 (e) contributing to the delinquency of a minor in violation of Section 76-10-2301; and

2323 (f) failure to comply with compulsory education requirements in violation of Section
2324 53A-11-101.5.

2325 (2) It is not necessary for the minor to be found to be delinquent or to have committed

2326 a delinquent act for the court to exercise jurisdiction under Subsection (1).

Legislative Review Note
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Office of Legislative Research and General Counsel